

JAN 22 1997

OFFICE OF CONSUMER COUNSEL

## LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

STATE CAPITOL - ROOM 506 HARTFORD, CT 06106-1591 (860) 240-0300 FAX (860) 240-0327

HAND DELIVER

January 22, 1997

The Honorable Guy Mazza  
Consumer Counsel  
Office of Consumer Counsel  
10 Franklin Square  
New Britain, CT 06051

Dear Attorney Mazza:

Enclosed please find a copy of the Legislative Program Review and Investigations Committee's final report on Consumer Representation in Public Utility Matters. As you know, the recommendations contained in this document were adopted by the committee at its December 12, 1996, meeting.

It is committee policy to provide state agencies subject to review with an opportunity to comments on committee findings and recommendations prior to a report's publication. If you wish to have a formal agency response included as part of each published report, we will need to receive the response at the committee staff office by Tuesday, February 4, 1997. We ask that your response be concise, and the committee reserves the right to edit the comments for length or clarification.

If there are factual errors in the document, please let us know about these separately. We will correct them prior to sending the report to the printer.

If you have any questions, please do not hesitate to contact Carrie Vibert. On behalf of the committee, I would like to thank you and your staff for the cooperation and assistance we received throughout the study.

Sincerely,

A handwritten signature of Michael L. Nauer in dark ink, written over a horizontal line.

Michael L. Nauer  
Director

Enclosure

### SENATOR

Eileen M. Daily  
Co-Chair

### REPRESENTATIVE

Ann P. Dandrow  
Co-Chair

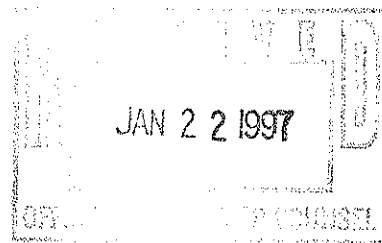
### SENATE MEMBERS

Eileen M. Daily  
Fred H. Lovegrove, Jr.  
William H. Nickerson  
Melodie Peters  
Edith G. Prague  
Stephen R. Somma

### HOUSE MEMBERS

Curtis Andrews, Jr.  
Terry Concannon  
Ann P. Dandrow  
Michael J. Jarjura  
Brian E. Mattiello  
Peter F. Villano

Michael L. Nauer  
Director



**CONSUMER REPRESENTATION IN PUBLIC UTILITY MATTERS**  
**FINAL DRAFT FOR COMMENT**

**LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

# Introduction

---

Historically, electric, gas, telephone, and water services have been considered natural monopolies and public necessities. In lieu of the market place, the rates charged and quality of service provided by investor-owned companies (as opposed to municipal entities) in Connecticut are regulated by the Department of Public Utility Control (DPUC). As such, consumer interests, including those of residential customers, small to large commercial and industrial businesses, and public institutions, are among the elements to be considered during DPUC decision making. The primary entity charged with advocating consumer interests before DPUC is the Office of Consumer Counsel.

## Scope

Early in 1996, the Legislative Program Review and Investigations Committee directed its staff to study how consumers were represented in public utility matters. The committee focus was on public utility matters over which the state Department of Public Utility Control (DPUC) exercises jurisdiction. (Excluded, then, from committee review were consumer representation matters relative to non-private utilities, such as the Metropolitan District Commission (MDC).) Functionally, the primary entity studied was the Office of Consumer Counsel (OCC), an independent state agency charged specifically with consumer advocacy within the DPUC arena. Other entities, including DPUC "prosecutorial" staff (staff designated as a party to a case instead of advising the commissioners) and the Office of Attorney General (OAG), can act in similar ways, but out of different purposes.

The threshold analytical question was what difference does the Office of Consumer Counsel make, within its current framework. From that analysis, the committee determined to assess the relationship of DPUC prosecutorial staff and OAG to OCC. The committee concludes that OCC exerts a positive influence for consumers, and should continue. The committee proposes recommendations to promote increased accountability, visibility, and readiness for change.

This study occurs at a time when the traditional scope and processes of state utility regulation are changing and poised for potentially more change. Notable is the new and emerging competition in telecommunications and similar contemplations for electric power generation. These shifts obviously will impact OCC. To the extent

competition becomes a reality for utility services, government's role, including that of consumer advocacy agencies, obviously shifts. Probably it diminishes. It is simply too soon to know exactly what will happen when, but it is not too soon to try to anticipate consumer protection needs during this transition period. For example, where competitive and non-competitive services are mixed, cross-subsidization is a major concern. Also, as consumer choices increase, consumer education becomes increasingly important.

## **Methodology**

Information about the procedures and operations of OCC, and pertinent procedures and operations of DPUC and the Office of Attorney General were compiled from state statutes and regulations, and interviews with current agency personnel. Documents related to the history of public utility consumer advocacy in Connecticut were reviewed. Literature on consumer advocacy was surveyed. All DPUC decisions on major rate cases handled by DPUC between 1990 through 1995 were examined as well as DPUC decisions in other types of cases. Finally, the committee examined OCC consultant files since 1993.

## **Report Format**

This report is divided into six chapters. Chapter One contains background information including a summary of the present day scope of investor-owned public utility regulation and a description of the regulatory structure consisting of DPUC, OCC, and the Office of Attorney General. Chapter Two describes regulatory operations, focusing on rate cases before DPUC. Chapter Three presents an analysis of OCC's impact on DPUC decisions. Chapter Four presents an analysis of OCC's impact on court appeals and contains recommendations based on these impact findings. Chapter Five discusses three different issue areas considered during the study-- divergent consumer interests, organizational location, and need for streamlining -- and makes recommendations in each area. The final chapter discusses OCC resources.

## BACKGROUND

### Theory and Present Day Scope of Public Utility Regulation

Historically, electric, gas, telephone, and water services have been considered natural monopolies and public necessities. In recent years, some public utility industries have been in transition toward competition due to technological advances and new ideas about delivering services. The theory is that where possible, competition should fashion the utility market price, quality, and product instead of a regulatory proxy. Actions of the federal government are strongly encouraging competition, impacting state regulatory scopes. The ultimate fate of consumers in a rapidly changing public utility world is an unanswered question right now.

### Profiles of Regulated Industries

Public utility regulation is complicated, and moves toward competition only increase the complexity. This section briefly highlights each industry.

**Electric.** Currently, three investor owned electric companies provided electricity to Connecticut homes, businesses, and industries-- Connecticut Light and Power (CL&P), United Illuminating (UI), and Bozrah Electric. Electric services are still provided essentially as they have been for many years, although underway in Connecticut, like many other states, are formal discussions on the issue of whether and how the electric industry should become competitive. Special Act 95-15 mandated the formation of the Task Force for Electric Industry Restructuring, made up of legislators and representatives from utilities, state agencies, businesses, and public interest organizations. The task force completed its work in December 1996, and did not achieve a consensus on what path the state should take.

In terms of process and scope of regulation, the electric public service providers are still regulated as they have been in the past. Rates continue to be based on the revenues needed to cover operating costs, taxes, depreciation, debt, and a reasonable rate of return on investor equity, or rate base.<sup>1</sup> Major issues continue to surround nuclear generation of electricity, such as what are reasonable and prudent capital expenditures and what costs should be paid for by ratepayers.

**Gas.** Three investor-owned gas companies provide service in Connecticut--Connecticut Natural Gas (CNG), Southern Connecticut Gas (SCG), and Yankee Gas. The federal government, through the federal Energy Regulatory Commission (FERC), exercises jurisdiction over wholesale gas prices. Gas suppliers within states are called local distribution companies. Until this year, these companies have each had their own franchise areas, with their rates and quality of service regulated by DPUC. Beginning April 1, 1996, under a FERC order, third party resellers are allowed to begin to compete with these companies in the servicing of non-residential customers. The resellers will compete with the gas companies in terms of purchasing wholesale natural gas to sell in-state. The third party resellers will have contracts with the businesses, unregulated by DPUC. Eventually, this will extend to residential customers.

**Telecommunications.** Until the last few years, three telephone companies provided in-state telephone service--Southern New England Telecommunications (SNET), Woodbury, and New York Telephone. In 1994, the state legislature adopted a telecommunications policy promoting the benefits of competitive telecommunications service. The legislature directed DPUC to implement this new policy, which DPUC has been doing for over two years now. The impact has been that the intrastate toll call market has opened up, and some companies are now seeking certificates of public convenience and need from DPUC to provide local call service. The process of moving telecommunications services into the competitive realm continues.

**Cable.** The state has limited jurisdiction over cable companies, pursuant to federal law. DPUC regulates rates for basic services, equipment and installation, while premium services are under federal jurisdiction. There are no longer exclusive franchise areas for cable services.

**Water.** Over 90 private, investor-owned water companies operate in Connecticut, of varying sizes. These water companies continue to be regulated by DPUC much as they have in the past. The impact of the federal Safe Drinking Water Act and its requirements is a major issue in the water area, as well as the problem of small water company viability.

## **Regulatory Structure**

The DPUC is an administrative regulatory agency that exercises legislative (policy-making), executive (enforcement), and judicial (decision making) authority in carrying out its charge to regulate the economic features of public utilities. In its decision making role, the department is charged with balancing many different interests, according to principles adopted by the general assembly in 1975 and set out below. The department process is often likened to the adversarial court system. Under this model, the DPUC commissioners are the judges, with department staff supporting the judges with their technical expertise. The utilities come to court, represented by counsel, seeking approval for something they want, for

example, increased rates to maintain an appropriate rate of return on their shareholders' investments. Their goal is to persuade the judge through written and testimonial evidence to see things their way (i.e., facts as well as interpretations of the law).

Who is on the other side in this model? It is the ratepayers, or customers of the utility, who will pay the higher rates. Customers are not an organized group, and in fact may have different interests. Since 1975, the Office of Consumer Counsel (OCC) has been charged "to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies.." The OCC is not the only voice for consumers before the department. Some groups of consumers hire their own representation in certain cases. Also, the Office of the Attorney General participates before the department in an advocate role for Connecticut citizens.

This section describes the organization, resources and activities of both DPUC and OCC. Also discussed are the Office of the Attorney General and other participants. As OCC works within the larger state regulatory structure headed by DPUC, that entity will be described first.

## **Department of Public Utility Control**

### **Organization<sup>2</sup>**

**Commissioners.** There are five public utility commissioners, who make up what is called the Public Utility Control Authority (PUCA). These commissioners are appointed by the governor with the advice and consent of both houses of the legislature. They are the final administrative decision makers for utility matters. (DPUC decisions may be appealed to court, like all administrative decisions).

By law, the commissioners serve full time, and currently at least three must have training or experience in at least one of the fields of economics, engineering, law, accounting, or finance. At all times, at least two fields must be represented on the authority. (After July 1, 1997, the fields of experience widen to utility regulation, public or government administration, consumer advocacy, business management, and environmental management, with at least three fields being represented on the commission at all times.)

**Commission staff.** Staff to support and assist the commissioners perform their regulatory functions comprise the Department of Public Utility Control. This staff includes engineers, rate specialists, financial specialists, accountants, and lawyers, and currently numbers 124 persons (132 authorized).

DPUC is headed by an executive director who serves at the pleasure of the commissioners. Currently, DPUC technical staff are organized into three divisions: Utility

Regulation and Research; Adjudications Division; and Advocacy and Regulatory Operations Division. The current DPUC organization chart is presented in Figure I-1.

**Utility Regulation and Research.** There are five different sections, one for each industry, each with its own mix of technical staff. These people serve as commission staff during proceedings. In total, there are 36 professional technical staff directly assigned to a technical unit; nine are engineers (with one vacancy) (28%), 10 are utility examiners and accountants (with one vacancy) (28%), four are financial specialists (11%), and seven are rate specialists (19%). The 36 include five section supervisors and a unit chief (all with technical backgrounds). They are assisted by five administrative support staff.

**Adjudications Division.** This division is made up of attorneys, who serve two functions. They serve as hearing officers when commissioners are not available, and also provide legal assistance as technical staff in proceedings. There are 11 attorneys, a decisions and findings coordinator, and one administrative assistant.

**Advocacy and Regulatory Operations Division.** Within this division is the consumer assistance unit (one supervisor, seven professionals, and one administrative staff), the utility operations and management analysis unit (one supervisor, two professionals and one administrative staff), the gas pipeline safety unit (three engineers) and the Call Before You Dig unit, which has no separate staff. The organization chart shows a unit called prosecutorial. While there used to be a permanent prosecutorial unit until 1991, there is no formal separate entity now. On an ad hoc basis, staff who normally perform other functions will be assigned to act as prosecutorial staff.

# STATE OF CT DPUC ORGANIZATION CHART

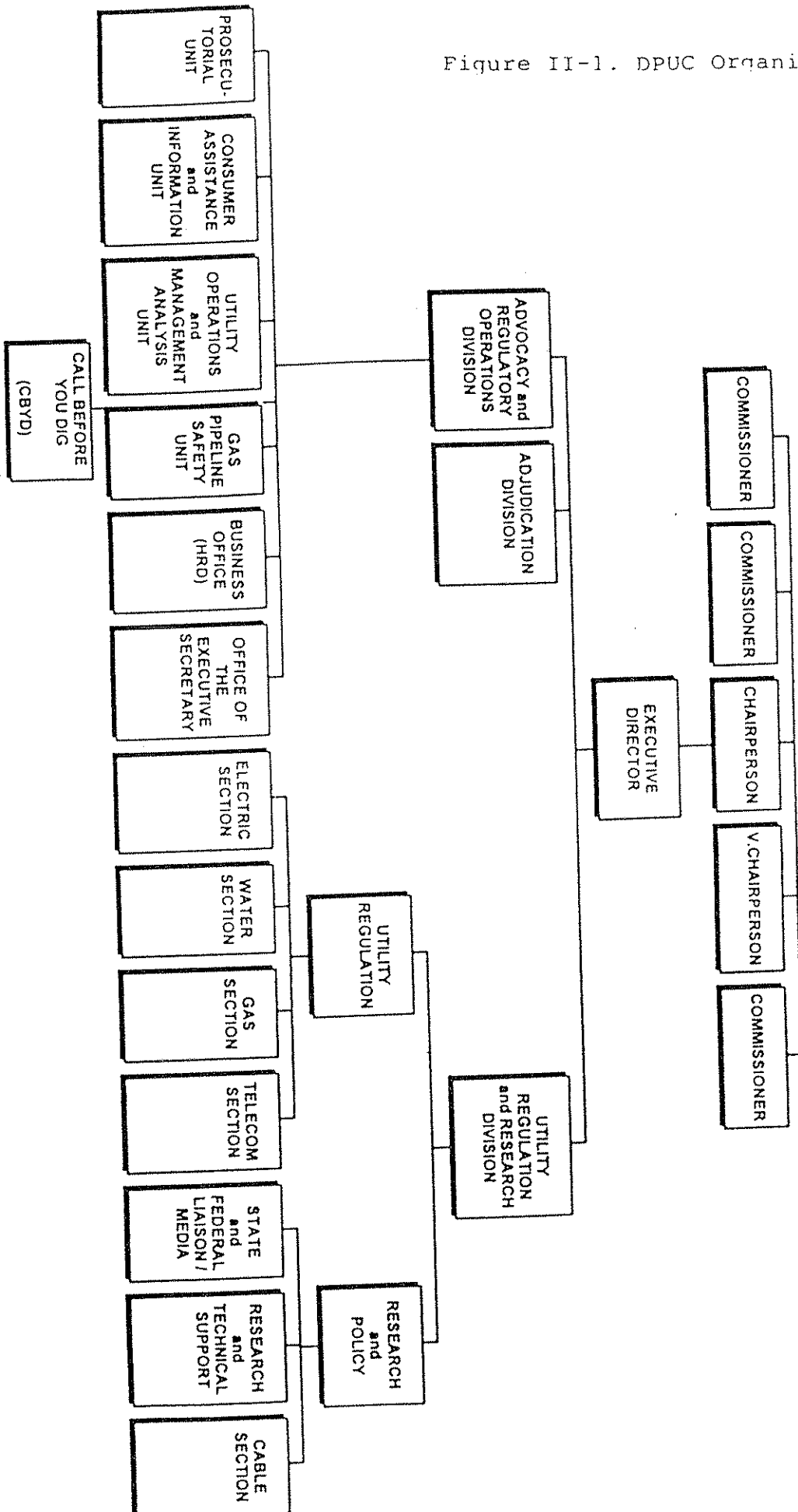


Figure II-1. DPUC Organization Chart

## Responsibilities

The department examines and regulates: 1) the level and structure of rates; 2) the expansion of the plant and equipment of existing public service companies; 3) the transfer of existing assets and franchises; and 4) the operations and internal workings of public service companies. Six statutory principles guide DPUC in its work:

- 1) There is a clear public need for the service being proposed or provided;
- 2) The public service company shall be fully competent to provide efficient and adequate service to the public in that such company is technically, financially and managerially expert and efficient;
- 3) The department and all public service companies shall perform all their respective public responsibilities with economy, efficiency and care for the public safety, and so as to promote economic development within the state with consideration for energy and water conservation, energy efficiency and the development and utilization of renewable sources of energy and for the prudent management of the natural environment;
- 4) The level and structure of rates shall be sufficient, but no more than sufficient, to allow public service companies to cover their operating and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable;
- 5) The level and structure of rates charged customers shall reflect prudent and efficient management of the franchise operation; and
- 6) The rates, charges, conditions of service and categories of service of the companies shall not discriminate against customers which utilize renewable energy sources or cogeneration technology to meet a portion of their energy requirements.

## Activities

**Utility-initiated cases.** Much of what DPUC does is in the form of cases in which DPUC is being asked by a utility to approve some action it wants to take. In general, when a request comes in for action by DPUC, a docket number is assigned, a lead commissioner along with DPUC technical staff are designated, and a schedule of events is established. The next section describes a rate case procedure, but for most cases, to a greater or lesser degree as needed, DPUC staff will:

- review written testimony and exhibits from utilities;
- obtain further information about and clarification of utility positions and positions of other parties by drafting interrogatories;
- ensure the record upon which the commissioners will make a decision is as complete as possible;
- cross-examine utility and other party witnesses at hearings;
- draft decisions; and
- provide technical background to advise the commissioners.

The types of docketed cases initiated by a utility include:

- rate increase cases;
- land sales (since 1995, where value > \$50,000);
- financial cases;
- parties seeking to obtain a certificate of public need and convenience to provide some new service, like in-state toll calling.

**Other cases.** There are other cases prompted by statutory or department directives, such as reviewing required plans, or based on the department's initiative or outside petition. These include:

- nuclear management prudence reviews;
- monthly and semi-annual reviews of the fuel cost adjustment/purchase gas adjustment;

- reviews of electric company utility conservation and load management programs;
- generic studies in which administrative and/or policy changes are explored and/or implemented (recent examples are the telecommunications dockets to implement P.A. 94- 83 (An Act Implementing the Recommendations of the Telecommunications Task Force), and the electric industry restructuring docket);
- reports to the legislature;
- investigation of failure to provide adequate service; and
- periodic review and investigation of the financial and operating records of a gas or electric company which has not come in for a rate hearing in the last four years, to determine if the rates of the company are unreasonably discriminatory, or just, reasonable and adequate, or that the service provided is inadequate or in excess of public necessity and convenience or that the rates do not conform to the statutory principles.

**Prosecutorial function.** Since 1985, DPUC has been required by statute to assign staff to act as a separate party in rate amendment proceedings for utility companies having more than 75,000 customers. This staff is "to review the proposed rate amendment filed by the company and file with the PUCA commissioners proposed modifications of the rate amendment". Any staff proposed modifications are to "carry out the purposes of the guiding principles" (set out above). The staff participates in the proceedings in support of its proposed modifications, and otherwise act like a separate party, including cross-examining witnesses and filing its own briefs. Prosecutorial staff may employ outside consultants.

DPUC regulations describes the prosecutorial unit as representing:

....the overall public interest by presenting and defending an alternative case as a party in large utility rate proceedings[. It] offers testimony and is subject to cross examination; [and] attempts to ensure that the record in such cases includes full development of state energy policy and probes utility company assumptions and assertions.

Until 1991, prosecutorial staff comprised a separate DPUC unit. Since then, staff normally working in other positions in the agency will be designated on a case basis to perform this very different function. This staff continues to perform their normal duties, while serving as prosecutorial staff.

As in court, DPUC has rules against ex parte communications between parties to a case and the judge, or decision maker. This means that a utility company representative cannot talk to a commissioner in private about a rate case. When DPUC staff is assigned to act as a separate party, these same restrictions apply. Thus prosecutorial staff cannot talk to any commissioners about the case they are acting as prosecutorial staff for, even though in other department matters, they communicate as normal. Other DPUC staff likewise as advisors to the commissioners cannot have communications with their colleagues designated as prosecutorial staff.

From 1990 through 1995, 12 rate cases were filed for which DPUC was required to assign prosecutorial staff. The utilities involved were: Bridgeport Hydraulic; Yankee Gas Service; Connecticut Light and Power (CL&P); Southern New England Telecommunications (SNET); CNG; and SCG. In four of these cases, one staff was assigned (one finance, one rate, and two accounting). In seven cases, two persons were assigned (five teams consisted of a legal staff person and a finance staff person). In one case, three staff were assigned (one legal, one rate, and one finance staff). In one case, a consultant was hired for the prosecutorial staff.

In terms of the issues worked on, prosecutorial staff worked on the rate of return issue in seven cases. In eight cases, prosecutorial staff addressed expenses. Other prosecutorial issues were: Rate design; cost of service; rate base; revenue requirements; revenue allocation; pensions; cost of debt; rates; decommissioning; taxes; depreciation; over earnings; purchase gas adjustment; customer service charge; working capital; rate rebalancing; quality of service; productivity; and alternative regulation.

**Consumer assistance.** The Consumer Assistance and Information Unit is part of the Advocacy and Regulatory Operations Division. Generally, the consumer unit handles individual complaints; provides general information to the public; and participates in some docketed cases. OCC does not as a rule deal with individual consumer complaints, but passes them along to DPUC.

When a consumer calls DPUC with a complaint, the phone call is logged. According to unit staff, they try to resolve the issue as quickly as possible. The utility companies have contact people with whom DPUC staff work. In the last two years, DPUC has hosted seminars for consumer service representatives from the utilities to share ideas about customer service.

Of course, consumers can and do go directly to utility companies with individual complaints. The large companies all have staff dedicated to customer service.

DPUC receives a lot of inquiries from the public related to utilities. Some callers request information about the DPUC function; others express general concern about utility rates. Others have specific complaints about some aspect of their utility relationship. Billing

and service termination complaints are the most prevalent. (Appendix A shows the total number of public contacts with the consumer service unit and what number of those are specific complaints.) DPUC currently does not compile information about outcomes, although in each case the agency asks about the customer's satisfaction with the way his or her complaint was handled.

**Other activities.** The DPUC also conducts or oversees utility management audits. State statute requires a complete audit of each gas, electric, or telephone company having more than 75,000 customers every six years. These audits are updated as required by the department.

After the audit is completed, if DPUC determines any of the operating procedures or other internal workings of the company are inefficient, improvident, unreasonable, negligent, or in abuse of discretion, the department may order the public service company (after notice and opportunity for hearing) to adopt any new or altered practices and procedures the department finds necessary to promote efficient and adequate service to meet public convenience and necessity.

All reasonable and proper costs and expenses as determined by the department of complying with any order of the department are recognized as proper business expenses of the company.

DPUC also is responsible for the state whistleblower law that protects employees of public utility companies that operate nuclear power facilities (or employees of vendors of these companies) when an employee reports to DPUC "substantial misfeasance, malfeasance, or nonfeasance" by company management. DPUC must investigate the matter and not disclose the identity of the employee without his consent unless it determines disclosure is unavoidable during the course of the investigation. Employer retaliation is not allowed. (If an employee knowingly makes a false report, he or she may be disciplined by the employer, up to dismissal)

DPUC may issue orders, including cease and desist orders, or impose penalties to enforce the whistleblower section.

## **Resources**

Budget information for DPUC is presented in Table I-1. The table breaks the operating budget down into three components: 1) personal services; 2) fees, outside professional services; and 3) other operating expenses. Personal services are essentially the salaries paid to DPUC employees. The outside professional services fees for the most part are expenditures for expert consultants for matters related to DPUC's regulatory function, prior to 1992. Since 1992, pursuant to legislation, DPUC and OCC gained the authority to hire consultants (up to \$200,000 per docket) and bill the utility directly. Because of this

authority, actual DPUC expenditures for consultants are not reflected in the budget. Consultant expenditures are discussed in Chapter 6.

Staffing levels at DPUC have varied over the years. The DPUC total operating expenditures for FY 86 was \$5,246,433, with 123 filled and 135 authorized positions. Ten years later, the total operating expenditures were \$6,070,233, with 129 authorized positions, a 16 % increase in expenditures. DPUC actual operating expenditures (less fringe) for FY 95 was \$7,128,022.

The DPUC (and OCC) are funded by assessments from utilities earning over \$100,000 in gross revenues annually. Until 1991, the assessments went into the general fund and funneled to the DPUC and OCC. Now there is a separated fund administered by the treasurer's office, the Consumer Counsel and Public Utility Fund. Since 1991, the utilities have been paying for fringe benefits.

Table I-1. DPUC Budget Expenditures FY 91-FY 95					
	90-91	91-92	92-93	93-94	94-95
Personal Services (Salaries)	\$4,703,115	\$4,698,789	\$5,186,005	\$6,017,716	\$6,095,748
Fees, Outside Professionals	\$25,497	\$0	\$42,720	\$676	\$0
Other Operating	\$801,673	\$753,000	\$870,420	\$1,107,080	\$1,039,810
Total Operating Expenses	\$5,530,285	\$5,451,789	\$6,057,226	\$7,124,796	\$7,135,558
Fringe Benefits	\$2,141,619	\$2,141,030	\$1,458,939	\$2,394,126	\$2,371,864
Indirect Overhead	\$415,943	\$383,557		\$284,198	\$284,198
Total FB/IO	\$2,557,562	\$2,524,587	\$1,458,939	\$2,678,324	\$2,656,062
Grand Total Operating Expenses	\$8,087,847	\$7,976,376	\$7,516,165	\$9,803,120	\$9,791,620
Capital Outlay		\$1,498	\$199,795	\$669,994	\$41,892
Office Equipment			\$1,316		\$62,218
GRAND TOTAL	\$8,087,847	\$7,977,874	\$7,717,276	\$10,473,114	\$9,895,730

## Caseload

For the most part, every case that comes before DPUC for a decision is given a docket number. However, there is wide variation in the types of issues, activities, and resources involved in the various types of dockets. Table I-2 shows the level of activity among industries.

**Table I-2: Docketed Cases Filed by Industry: 1993-1995 (calendar)**

	1993		1994		1995	
Electric	55	17%	44	11%	38	11%
Gas	17	5%	21	5%	12	3%
Telecommunications	126	40%	205	50%	188	55%
Water	80	25%	94	23%	76	22%
Cable	31	10%	38	9%	20	6%
All	6	2%	6	1%	9	3%
Total	315	100%	408	100%	343	100%

Source: DPUC Docket Database

Of the many types of cases, rate cases are the most complicated and time consuming, although they do not represent a large number of DPUC cases. From 1990 through 1995, 19 major rate cases were handled by DPUC. As an example of the breakdown of the cases, the table below shows the variety of cases in calendar 1995.

**Table I-3: Docketed Cases by Type and Industry: 1995 (calendar)**

	Electric	Gas	Telecom- munications	Water	Cabl e	All	Total
Application to increase rates	-	1	-	5	-	-	6
Public certificate of convenience and necessity	-	-	78	8	-	-	86
Financial	3	1	-	8	-	-	12
Generic	1	-	2	-	-	1	4
Formal individual consumer complaint	2	1	-	1	1	-	5

**Table I-3: Docketed Cases by Type and Industry: 1995 (calendar)**

	Electric	Gas	Telecom- munications	Water	Cabl e	All	Total
Land sale/easement	10	1	13	4	-	-	28
Fuel adjustment clause/purchase gas adjustment	4	-	-	-	-	-	4
Call before you dig	-	-	-	1	-	3	4
Custom service agreement	-	-	48	-	-	-	48
Declaratory rulings	3	1	2	5	1	-	12
Franchise renewal	-	-	2	-	-	1	3
New services/tariff amendments	-	-	23	-	-	-	23
Promulgate regulations	1	2	1	-	1	1	6
Approve water supply plans	-	-	-	15	-	-	15
Other	14	5	21	29	15	4	88
Total	38	12	188	76	20	9	343

## **Office of Consumer Counsel**

### **Organization**

The Office of Consumer Counsel is an independent state agency located within DPUC for administrative purposes only. The office is headed by a consumer counsel, who is appointed by the governor for a five year term, with the advice and consent of either house of the general assembly. The consumer counsel must be a state elector and have “demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public.” The consumer counsel does not have to be an attorney, but if he or she is, there are restrictions on post-counsel appearances before DPUC.

Figure I-2 contains an organizational chart for the office. The office currently has a total staff of 13, including eight permanent professional staff and one durational project manager. Total authorized staff positions number 17; five professional positions are currently vacant, or 38 percent of the 13 professional staff authorized positions.

The 13 permanent professional staff positions include: the assistant to the consumer counsel; three attorneys (with three vacant attorney positions); two utility examiners (with one vacant account examiner position); and two principal finance specialists (with one vacant finance specialist position). In addition there are three administrative support personnel.

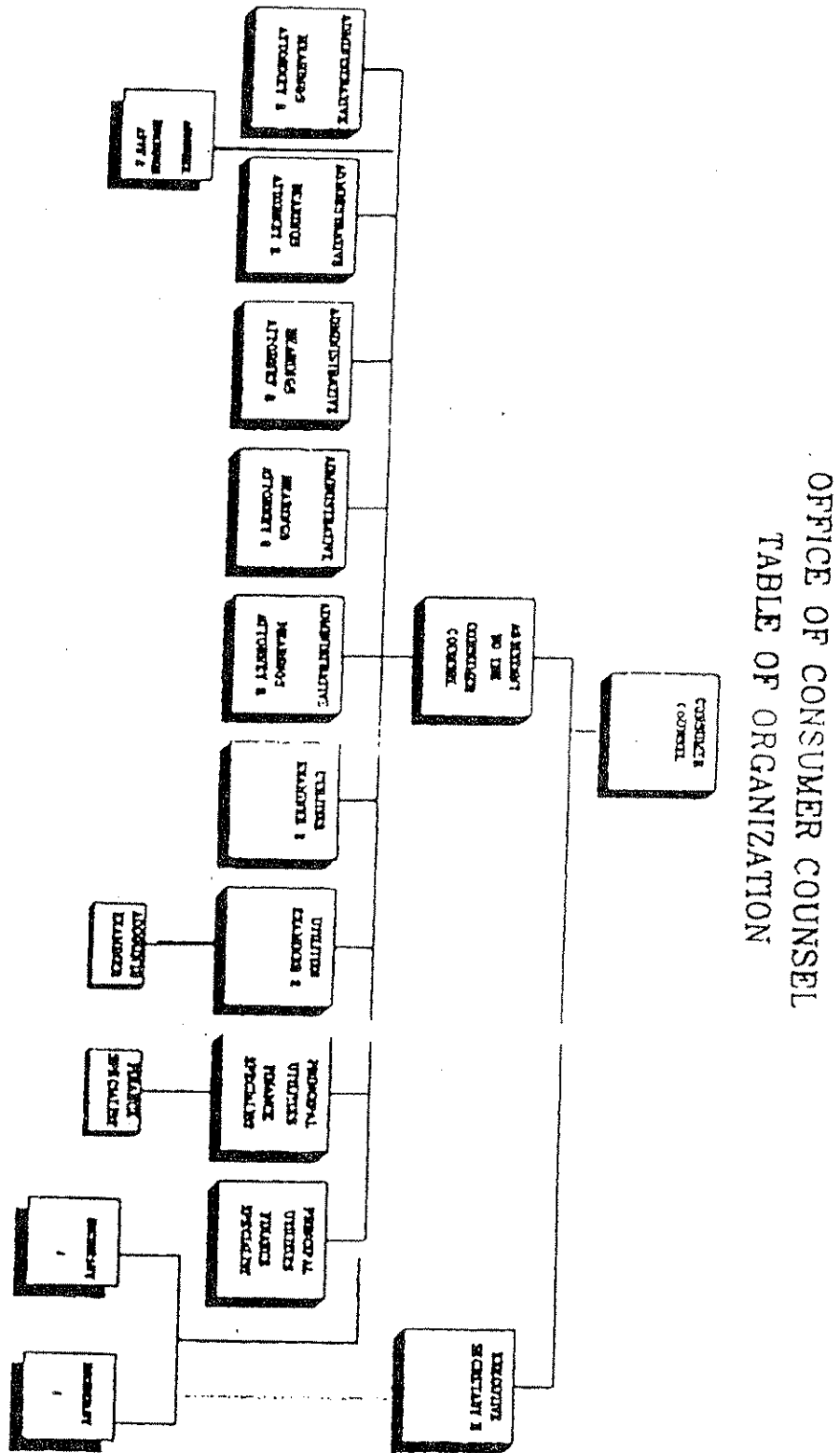
### **Responsibilities**

The Office of Consumer Counsel is charged to “act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies” and certain telecommunications businesses. It is an automatic party to each contested case before DPUC and is to “participate in the proceedings to the extent it deems necessary.” Its decision is based on the issues in a given case and the nature of the consumer interests involved.

Included in its authority and responsibility are the following:

- OCC is authorized to appear in and participate in any federal or state regulatory or judicial proceedings in which the interests of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in the state may be involved;
- OCC may appeal from a decision, order or authorization in any state regulatory proceeding even if it did not appear or participate in the proceeding;

Figure II-7. OCC Organization Chart



- OCC may access department records, is entitled to assistance from department experts, and to the benefit of department facilities or information in carrying out its duties, except as prohibited by ex parte rules (OCC does not have access to: internal documents, information and data not available to parties to the department's proceedings);
- OCC may file a petition with DPUC concerning matters affecting utility services for consumers (DPUC, no later than 30 days after receiving the petition must tell OCC whether it will hold a hearing on the petition; any such hearing must be held within 90 days of the DPUC decision); and
- OCC, via the consumer counsel, can hire any necessary staff to perform the duties of the office and may employ from time to time outside consultants knowledgeable in the utility regulation field including but not limited to economists, capital cost experts and rate design experts.

**Consultants.** The OCC has always utilized consultants to a significant degree. Consultants are used to assist OCC staff, prepare written testimony, and appear as expert witnesses at DPUC hearings. OCC expenditure data in years past show consultant fees to equal as much as a third of OCC personnel costs. Before 1992, a fixed amount would be budgeted for consultant costs. In 1992, because of projected increases in DPUC and OCC workload surrounding telecommunications competition implementation, the legislature established separate statutory funding authority for consultants, independent of the budget.

Specifically, consultants, selected by OCC, may be hired to provide expertise in areas in which staff expertise does not currently exist or when necessary to supplement existing staff expertise. The law limits expenditures to no more than \$200,000 per case with more than 15,000 customers, and \$50,000 in cases involving companies with less than 15,000, although the limits may be exceeded for good cause. In cases of multiple proceedings like the telecommunications dockets implementing P.A. 94-83, the per case limit may be exceeded as long as the aggregate amount is within the law.

Under the provision, if OCC decides it needs a consultant, it submits this request in writing to DPUC. The requests are in the form of standard letters tailored to the particular case, and state the maximum dollar amount to be spent. As required, DPUC through the lead commissioner in a case, notices other parties about this request in case they want to comment or object. Ultimately, DPUC approves the request in the manner of an order, with a formal letter going to OCC. On occasion, questions are raised about OCC's need for a consultant, but a request has never denied. Because the approval process can take up to a month, OCC has reached an understanding with DPUC that the consultant contract period starts on the date of the request letter to DPUC.

Under this provision, the specific utility company involved in the specific case is forwarded bills submitted to OCC, typically on a monthly basis, after OCC verifies the accuracy of them. The company pays the consultant directly. These expenses are considered part of the utility's operating expenses, and as such may be recovered through rates.

Information about OCC consultant expenditures may be found in Chapter Six.

## **Activities**

**Docketed cases.** The Office of Consumer Counsel is an automatic party to all contested cases before DPUC, and "shall participate in such proceedings to the extent it deems necessary." The level of participation depends on the type of case and the nature of the consumer interest involved. In terms of what consumers the office represents, as former consumer counsel John Merchant put it: "[OCC] represents who [it] identifies as not having anyone to represent them".

When they receive notice of a contested case docket, staff is assigned and develops a plan of work identifying the issues in the case and what the office focus should be. The decision to use a consultant is usually made at this early stage.

In a case where there will be a hearing, OCC staff reviews the company application materials, submit a series of interrogatories to the utility, and cross-examines utility witnesses. Procedurally, this is similar to what DPUC staff does in a rate case, although the substance of their inquiry may differ. However, in their advocate role, OCC staff develops and presents proactive, direct testimony of their own, and monitors the work of any consultant assisting them. The written testimony that OCC produces in a case is subject to interrogatories and cross examination from the utility, DPUC staff, and any other parties or intervenors.

Finally, OCC staff prepares briefs and reply briefs for consideration by the commissioners at the close of a case, reviews the draft decisions and submits written exceptions to them if needed.

In contrast, the office does not have the same involvement in some cases, for example, the numerous cases in which entities apply to be certified to offer telecommunications service in Connecticut.

**Conservation and load management program.** The Office of Consumer Counsel is one of several members of a collaborative group that works on implementing the conservation load and management program. Also participating are the Conservation Law Foundation, and the Office of Policy and Management.

Established by the legislature in 1988, each gas or electric company is required to "implement a cost effective conservation and load management program consistent with integrated planning principals." DPUC must require that specific programs targeting manufacturer needs are included in the programs.

Under the program, conservation and load management expenditures are either part of the rate base or operating expenses, and a utility can earn an extra one to five percentage points higher than the rate of return approved by the department in the company's latest rate case.

**Court appeals.** The OCC may appeal DPUC decisions to court. Over the last four years, OCC has appealed 12 decisions and has sought judicial intervention on one occasion when they believed they did not have adequate time to obtain information from a utility company. Information on court appeals may be found in Chapter Four.

**Other activity.** OCC is a member of the Electric Industry Restructuring task force and also participated in the telecommunications task force. The office often presents testimony before the state legislature.

### **Caseload and Resources**

The OCC caseload theoretically mirrors the DPUC caseload, qualified by the level of its involvement based on its priorities. Table I-4 sets out OCC actual expenditures for the ten year period from FY 1986 through FY 1995.

**Table I-4. OCC Budget Expenditures FY 91-FY 96**

	90-91	91-92	92-93	93-94	94-95	95-96
Personal Services (Salaries)	\$344,893	\$403,396	\$502,653	\$647,342	\$659,938	\$655,463
Fees, Outside Professionals	\$102,727	\$21,355	\$1,163	\$152	\$387	\$0
Other Operating	\$70,846	\$97,786	\$161,374	\$205,005	\$195,099	\$249,188
Total Operating Expenses	\$518,466	\$522,537	\$665,190	\$852,499	\$855,424	\$904,651
Fringe Benefits		\$191,802	\$141,564	\$258,937	\$259,025	\$260,630
Indirect Overhead						\$7,100
Total FB/O	\$518,466	\$191,802	\$141,564	\$258,937	\$259,025	\$267,730
Grand Total Operating Expenses	\$518,466	\$714,339	\$806,754	\$1,111,436	\$1,114,449	\$1,172,381
Capital Outlay				\$85,121	\$17,604	\$31,805
Office Equipment					\$1,384	
GRAND TOTAL	\$518,466	\$714,339	\$806,754	\$1,196,557	\$1,133,437	\$1,204,186

## **Utility Assessment**

By law, certain public utility companies are assessed for the costs of DPUC and OCC. These are public service companies and any entity certified by DPUC to provide intrastate telecommunications services with more than \$100,000 in taxable gross revenues, unless the entity is not providing direct retail service to state consumers.

On September 1 of each fiscal year, DPUC gives each company a statement which includes:

- the amount appropriated to DPUC and OCC for the fiscal year beginning July 1 of the same year, the cost of fringe benefits for DPUC and OCC personnel for the fiscal year, as estimated by DAS, and the amount of expenses for central state services attributable to the DPUC and the OCC for the fiscal year, as estimated by the comptroller;
- the total gross revenues of all public service companies, except (A) telephone companies, as defined in section 16-1, which are taxable by the state, and (B) the total gross revenues of all telephone companies derived from the sale of telecommunications services, as defined in subsection (24) of section 12-407, which are reportable under chapter 219, and (c) the total gross revenues of all persons, firms or corporations certified by the DPUC to provide intrastate telecommunications services
- the proposed assessment against the company for the fiscal year beginning July 1 of the same year, adjusted to reflect the estimated payment required by subdivision (1) of subsection (c) of this section.

The assessment is calculated by multiplying the company's percentage share of the total gross revenues specified in subdivision (2) of this subsection by the total amount compiled under subdivision (1) of this subsection. The companies pay the assessments in quarterly amounts, with an annual adjustment to reflect any credit or amount due under a recalculated assessment for the previous fiscal year.

## **Office of Attorney General**

The Office of Attorney General is the official legal advisor for DPUC, and represents the department in court. Three assistant attorneys general are now located at DPUC working in this capacity.

In recent years, the Office of Attorney General has taken on another role in public utility matters, that of citizen advocate. In this role, which can conflict with the office's other role, one and a half assistant attorneys general enter into selected cases as parties. Appendix

B is a summary description, prepared by the Office of the Attorney General, of recent activity of the attorney general's advocacy staff.

### **Other Parties and Intervenor<sup>3</sup>**

There are other entities that act in intervenor status, including consumers. These entities may issue interrogatories to the utilities, cross-examine utility witnesses, and submit briefs for consideration by the commissioners. For example, some of Connecticut's largest companies are represented before the DPUC by the Connecticut Industrial Council of Energy Consumers (CICEC), including: Clairol, Inc.; Cytec Industries; Federal Paper Board Co.; General Motors Corp.; Hamilton Standard; Kimberly-Clark Corp.; Olin Corp.; Stone Container Corp.; Union Carbide; and United Technology, Pratt and Whitney.

Other industrial consumers are represented by the Western Connecticut Industrial Association. Similarly, municipalities will on occasion hire counsel to represent their interests. In some cases, groups of residential consumers (e.g., Heritage Village Civic Association Inc. in Southbury) are represented by their own professional counsel.

By statute, the Department of Environmental Protection, the Department of Economic and Community Development, the Connecticut Siting Council and the Office of Policy and Management are to be made parties in electric and gas company rate proceedings, that are based on an alleged need for increased revenues to finance an expansion of capital equipment and facilities. These entities are to "participate in the proceedings to the extent necessary."

### REGULATORY OPERATIONS

As discussed earlier, many types of cases come before DPUC. One significant type of proceeding--an application for a rate increase--will be sketched out in this section to illustrate what consumer representation "looks" like in practice. The department is governed by the Uniform Administrative Procedures Act, which dictates how contested cases, like a rate case, proceed. Figure II-1 depicts the main steps in a rate case.

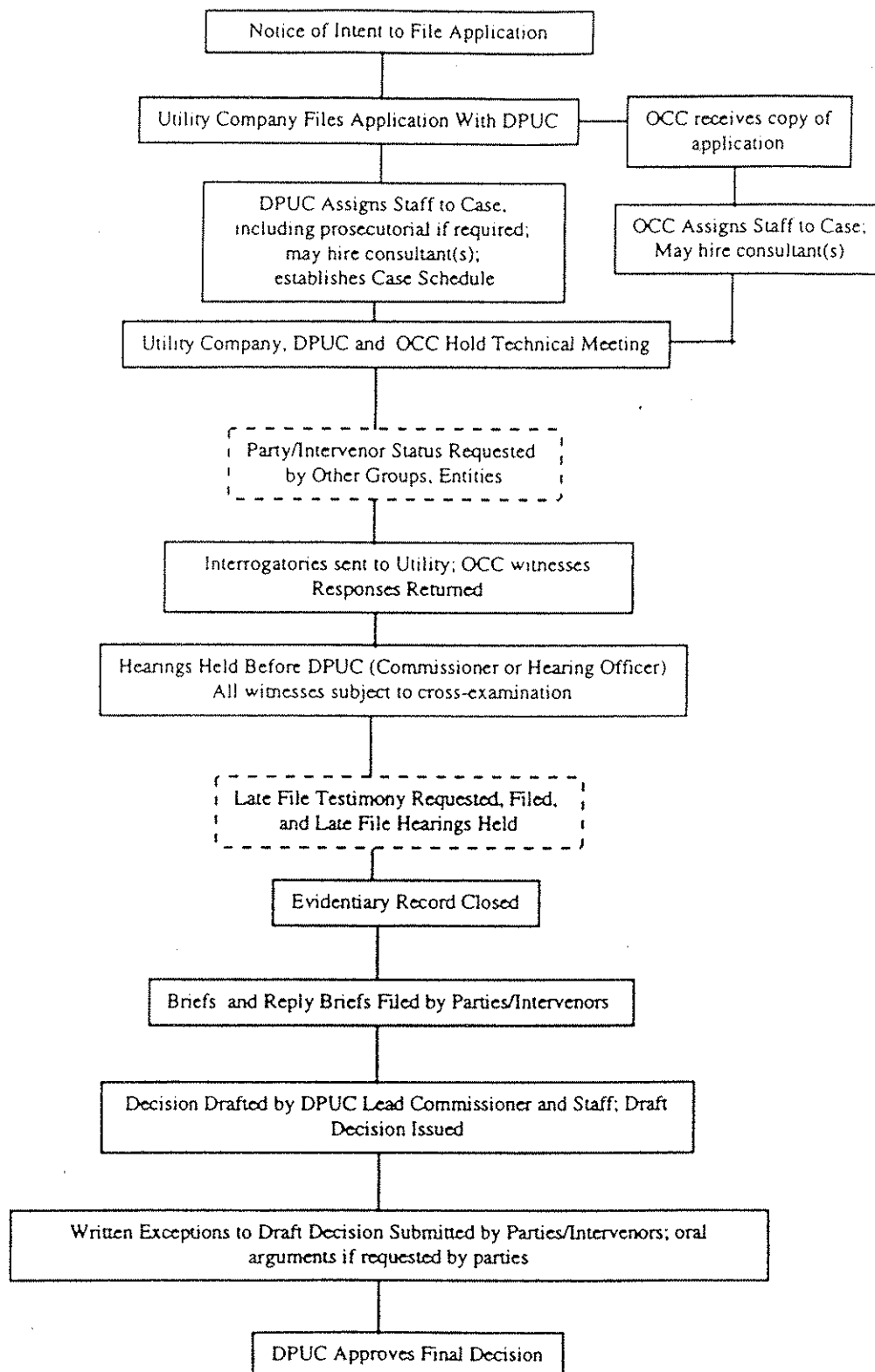
**Filing of application.** The decision to seek a rate amendment is entirely up to a company, as is the timing of the request. Companies are required to file a notice of intent to file a rate amendment application with DPUC at least 30 days prior to the actual filing. When the company files the formal application, the clock starts running on the 150-day statutory timetable for a decision. OCC receives a copy of the application material directly from the company at the same time it is filed with DPUC.

DPUC regulations govern what information must be filed by a company. The application must state clearly what relief the applicant is seeking, and a concise and explicit statement of the facts upon which DPUC is expected to base a positive decision. Attached to this statement are any exhibits, sworn written testimony (called pre-filed testimony), data, models, illustrations and other materials the company thinks are necessary to its case. The amount of paper in an initial application can easily stack over two feet high.

When the application is filed, the DPUC executive secretary's office assigns a docket number to the case. The executive secretary is responsible for maintaining the official files and distributes all materials related to the dockets to technical staff and participants in the docket. When a new docket is established, the chairman typically assigns a panel of three commissioners, and designates a lead commissioner. (All five may be assigned in some cases). DPUC management makes staff assignments and establishes a schedule for key points in the rate case process, such as when the hearings will be held and when briefs will be due.

After receiving its copy of the application, OCC management also makes staff assignments. Assigned staff review the application, make a preliminary assessment of the issues in the case, and develop a plan for

Figure III-1. Steps in DPUC Rate Case



addressing them. At this point, OCC will decide whether it needs to hire a consultant or consultants to supplement staff and serve as expert witnesses. If OCC decides it needs a consultant, it must submit its request in writing to the lead commissioner.

**Discovery.** The application is treated by DPUC as a “substantially complete statement of the case- in-chief of the applicant”, meaning all the evidence the utility intends to present. Prior to the formal hearing process, there is a period called discovery in which DPUC and OCC staff, and other parties or intervenors, submit written questions (called interrogatories) to the utility, if needed, for further information and clarification. Typically the utilities have a two-week period in which to respond; often, these answers will prompt more interrogatories. There can be several waves of these interrogatories. As a party, OCC makes an affirmative presentation of how it believes the rate request should be treated. Thus, OCC will submit written testimony (pre-file testimony), prepared by OCC staff or outside expert consultants. The utilities and DPUC submit written interrogatories for these witnesses to answer. This interrogatory process can go on for more than two months.

**Hearings.** The next step is the hearing stage. According to DPUC regulations, the company opens and closes the presentation of any part of the case. When the opening portion has already been submitted in written form (pre-filed testimony), the company attorney elicits from each witness who prepared pre-filed written testimony a sworn statement that everything in the pre-file testimony is true. The witness is then cross examined by the other parties and intervenors. After cross examination, the company can elicit testimony in rebuttal. The OCC presents its witnesses in the same manner as the company, and those witnesses are cross-examined.

The hearing portion may take days and includes public hearings held around the state to give the public a chance to comment. (The law requires a company to notify each customer who would be affected by the proposed rate increase at least a week before the public hearing. The notice also includes a DPUC phone number for information about the date of the public hearing; whether the proposed increase would raise rates by more than 20%, and by how much.)

During the course of the hearings, additional material may be requested from the company. This material is called late filed testimony, which is introduced into evidence and subject to cross examination in late-file hearings.

The proceedings are all recorded by a court reporter. Sometimes, when a commissioner is not available, the hearings are presided over by a lawyer from the DPUC adjudication division, serving as a hearing officer. Sometimes, a single commissioner presides. Staff attorneys from the Office of the Attorney General are available to the DPUC as their formal legal advisors at hearings, as well as DPUC adjudication staff. The presiding officer controls the hearing, with the rules of evidence set out in regulations. Commissioners may limit number of witnesses or testimony time to avoid unnecessary cumulative evidence.

**Briefs and final decision.** At the close of the hearing portion of the process, the presiding officer sets deadlines for the parties to file proposed findings of facts and briefs. The parties receive each other's briefs at the same time they have filed theirs, so they have the opportunity to file reply briefs. After all the briefs and reply briefs are in, the lead commissioner and DPUC staff have internal meetings to discuss the issues to be resolved and the evidence submitted. What the PUCA must determine is:

- whether the rates conform to the principles and guidelines set out in statute; or
- are unreasonably discriminatory or more or less than just, reasonable and adequate; or
- That the service furnished by such company is inadequate to or in excess of public necessity and convenience

If the commissioners make a negative finding about any of these factors about a rate amendment application, they are supposed to determine and prescribe, as appropriate, an adequate service to be furnished or just and reasonable maximum rates and charges to be made by the company.

After DPUC staff reviews and analyzes the material on the record, a draft decision is prepared for the commission. The decision must include all findings of fact and conclusions of law relied upon by the commission. Usually the draft decision is issued publicly, and written exceptions and/or oral arguments are accepted on the draft, after which a final decision is approved by the panel of commissioners assigned to the case. If the three member panel vote is not unanimous, the full five member panel then must vote and a simple majority wins.

**Effect of missing deadline.** The DPUC is to issue a final decision on each rate filing within five months (150 days) from the proposed effective date of the rate increase, unless it extends that period another 30 days after notice to all parties and intervenors. (Maximum period- six months). If the DPUC doesn't meet the deadline, the amendment can become effective pending the DPUC decision.

**Settlements and stipulations .** Cases can be settled outside the formal process described above through party negotiation. Likewise, portions of a case may be resolved through stipulations of the parties, where they pronounce agreement about something. Any settlement must be approved by DPUC, which is not obliged to do so, thereby forcing the utility into a formal proceeding.

**Rate case expenses.** Expenses a company incurs in presenting a rate application to the DPUC are usually determined to be operating expenses as part of the rate case itself, and thus payable by the ratepayers. Program review staff is continuing to develop data on case

costs from the state agency side. The table below shows some recent rate case expenditures. It should be remembered that ratepayers pay for all of these expenditures.

**Table II-2. Recent Utility Rate Case Expenses Compared to DPUC and OCC FY 95 Personnel Expenditures**

Entity	Allowed Rate Case Expenses	Rate Case Expense as Percent of OCC Personnel Expenditures 94-95)	Rate Case Expense as Percent of DPUC Personnel Expenditures (94-95)
CL&P	\$420,000	64%	7%
CNG	\$450,000	68%	7%
Southern Gas	\$393,412	60%	6%
Yankee Gas	\$95,790	15%	2%
BHC (water)	\$369,468	56%	6%
CTAM (water)	\$37,000	6%	<1%
CWC (water)	\$179,000	27%	3%

**NOTE: DPUC Personnel expenditures 1994-1995=\$6,070,233**  
**OCC Personnel expenditures 1994-1995= \$659,938**

## Chapter Three

### OCC IMPACT: BEFORE DPUC

By its nature, the deliberative regulatory adjudication process does not lend itself easily to cause and effect analysis. There are many inputs, and written decisions do not always reflect the impact of these inputs. However, the committee determined to identify impact measures to assess the effects of OCC. The committee examined 15 major rate cases decided by DPUC from 1990 through 1995, looking for outcomes directly related to OCC actions. (There are many other types of cases that come before DPUC, but these major rate cases were selected because of their significant effect on so many consumers.) The results of the examination are discussed in this section.

As a preliminary matter, OCC may be beneficial by just existing as an independent statutorily designated party charged with voicing consumer interests in DPUC proceedings. Much of the regulatory work done by DPUC is carried out in a formal, adjudicatory manner, underpinned by procedural rules. An institutional party using those rules in a consistent, day-to-day presence, is important. Although focused on consumer intervenor groups as opposed to institutional parties such as OCC, Law Professor Stefan Krieger's comments are instructive:

Political science literature contains several significant findings in regard to the effectiveness of consumer intervenors in public utility commission proceedings. One finding is that groups are almost always more influential than individual citizens in commission proceedings. This is true not only because agencies are interested in averting risk and responding to political pressure, but also because groups have greater ability to persist and follow through than do individuals...

Research has also shown that groups are effective only if they can perform [certain] functions. First they must be able to monitor the agency's activities over a period of time. Regulation is an ongoing, open-ended project, and groups must have the staying power for the long haul.....Second, to be effective, groups regularly must provide expert information to the agency to counterbalance the influence of the industry...Organizations that provide information are more

influential not only because they provide specific data to regulators for a particular decision, but also because they establish a general reputation over a period of time in working with regulators to resolve problems.<sup>4</sup>

Several DPUC staff noted in interviews that OCC performs a useful function, at times raising issues not thought of by other parties. Their consultants hired as expert witnesses are often useful to developing a full record, according to DPUC staff. Representatives of DPUC testified at the August 1996 program review hearing that:

...the [OCC] enhances the DPUC's work, resulting in decisions that better reflect the public interest....The Department has been the beneficiary of the services of the independent Office of Consumer Counsel for over 20 years. The OCC has unstintingly represented ratepayer interests...

### **OCC Activities**

As Krieger notes "although the literature is replete with calls for the expansion of intervenor rights and increased intervenor funding, little examination has been made of the quality of advocacy by intervenor groups". He cites several reasons for this, including a lack of accountability systems and "broad discretion in defining their clients' interests and the mode of representation".

The committee examined DPUC decisions in 15 rate cases, looking for evidence of OCC influence. DPUC decisions are required to be in writing, and "specify the reasons" for the decision. The committee found that the treatment of OCC positions varied, from in-depth discussion and analysis, concurrence, rejection, to no mention at all.

To understand OCC's potential realm of influence, a brief description of what happens in a rate case might be useful. As described in the briefing, when a company applies for a rate increase, it is really asking for an increase in the total revenues it may raise via ratepayer charges. Allowed revenues are based essentially on three different components: 1) the utility's operating expenses; 2) the value of the physical plant that provides the commodity, or the ratebase, (which represents what investor dollars have created); and 3) the rate of return for the investors. These elements are often expressed by the formula:

$$R = O + B(r)$$

(R is the revenue required by the company, O is utility operating expense, B is ratebase, and r is rate of return)<sup>5</sup>

In its rate application, the company sets out what it believes will be, for the period when the new rates will be in effect, its operating expenses, the value of its rate base, and

what it needs to be able to pay its investors to attract investment. To develop these figures, the utility is required to select what is called a test year, a recent period of 12 consecutive months for which all costs are actually known. Then the utility adjusts those actual test-year costs to account for known changes that will affect the company costs in the year the new rates would be in effect.

The consumer counsel's office examines a company's application and ultimately establishes positions on various elements in the application. Any other parties and intervenors also develop positions different from what the company proposes, mostly on certain specific issues. A rate case is, very simply put, the process of working toward DPUC's final decision on these components. The program review committee focused on two cost elements: rate of return and operating expenses.

**Rate of Return.** This cost element is perhaps more easily thought of as the cost of capital to a company. Like most private business enterprises, utilities obtain capital from investors and through borrowing. The primary contested issue in a rate case is what the return on investment dollars will be, known as return on common equity (ROE). The allowed ROE represents the profits of the company. Generally, for large utilities, common stock accounts for close to one-half of a utility's capital, with long-term debt the other half. (Typically, there is a very small (2-3%) amount of preferred stock).<sup>6</sup>

Economist Alfred Kahn observes:

Governmental price-fixing is an act of political economy. And, it bears, repeating, this means that it necessarily and quite properly involves the striking of a balance between conflicting economic interests, influenced by political considerations in both the crassest and the broadest possible senses, and informed by community standards of fairness. Therefore, from time to time, the courts and commissions have characterized the entire task of setting "just and reasonable rates", and particularly that portion representing return to shareholders, in terms of reaching an acceptable compromise between the interests of investors on the one hand and consumers on the other. The conception is that there is no single, scientifically correct rate of return, but a "zone of reasonableness" within which judgement must be exercised.

....[T]here is no objective, unequivocal method of ascertaining the cost of capital, even for a particular regulated company at a particular time and place; the process requires the exercise of a good deal of judgement, and judgements will inevitably differ as to the result.<sup>7</sup>

In each rate case, OCC's position on return on equity was discussed and analyzed in great detail, as was the company's. In 14 cases, the OCC expert witness was a permanent OCC staff member; in one case, OCC hired a consultant for the ROE issue. The utility

companies also used consultants. Standard methodologies are used by financial analysts to forecast equity returns. Generally, differences in results come from the selection of inputs into the methodologies (e.g., utilities considered comparable).

Table III-1 compiles the results for each case, showing the ROE proposals and the final DPUC decision. The average ROE request from the utilities was 12.98%, while the average ROE proposed by the Office of Consumer Counsel was 11.99%. The average ROE actually approved by DPUC was 12.11%, 0.87% lower than the company average and 0.12% higher than the OCC average.

**TABLE III-1. Return on Equity Positions and Decisions: Fifteen Rate Cases**

Case	Co. Name	Docket	CO	DPUC	OCC	PRO	Co - DPUC Difference	OCC-DPUC Difference	\$ Difference between Co and DPUC ROE (weighted)
1	BHC	90-05-04	13.75	13.25	12.52	12.66	0.5	-0.73	\$318,122 (3.2%)
2	YGS	90-05-11	13.0	13.0	13.0	13.0	0	0	not applicable
3	CWC	90-06-24	14	12.7	12.7	n/a	1.3	0	\$582,747 (5.6%)
4	CTAM	90-07-17	13.9	12.55	12.7	n/a	1.35	0.15	\$230,221 (9%)
5	CLP	90-12-03	13.3	12.9	12.5	12.71	0.4	-0.4	\$9,407,820 (4.1%)
6	SWC	91-01-03	13.75	12.85	12.44	n/a	0.9	-0.41	\$146,791 (4.4%)
7	YGS	92-02-19	12.8	12.43	12.25	n/a	0.37	-0.18	\$542,653 (2.8%)
8	UI	92-06-05	12.9	12.4	12	n/a	0.5	-0.4	\$1,803,718 (6.3%)
9	CTAM	92-06-12	12.1	11.35	12.1	n/a	0.75	0.75	\$143,353 (8.1%)
10	SNET	92-09-19	13.5	11.65	11.48	n/a	1.85	-0.17	\$18,485,362 (11.6%)
11	CLP	92-11-11	12.9	11.5	11.4	n/a	1.4	-0.2	\$18,768,338 (12.3%)
12	BHC	93-01-02	12.45	11.6	11.4	n/a	0.85	-0.2	\$696,258 (4.1%)
13	CNG	93-02-04	12.7	11.2	11.26	10.8	1.5	0.06	\$1,905,664 (7.2%)
14	CNG	95-02-07	12.2	10.76	10.65	n/a	1.44	-0.11	\$1,961,140 (6.9%)
15	SCGC	93-03-09	11.45	11.45	11.45	11.45	0	0	not applicable
Average			12.98	12.11	11.99				

Notes:

1. ROEs in #2 (YGS) were result of settlement approved by DPUC.
2. DPUC ROE in #5 (CLP) of 12.9 was found appropriate, but return authorized by DPUC was range from 12.9 to 14.9. Incentive formula applies to over 12.9 and up to 14.9 (50% to company, 50% to ratepayers)
3. The Co ROE and OCC ROE in #9 (CTAM) were based on a settlement between CTAM and OCC (DPUC didn't approve settlement)
4. OCC ROE in #10 (SNET) was supported by both AG and PRO.
5. Figures for #11 (CLP) are for one year of the three-year decision.
5. CO ROE in #12 (BHC) is mid-point of range requested by company.
6. OCC ROE in #12 (BHC) is mid-point of range proposed by OCC.
7. ROEs in #15 (SCG) were result of settlement approved by DPUC.

8. The dollar amounts in the column farthest to the right are the differences between the products of the weighted costs of equity, using the company proposed ROE and the DPUC approved ROE, multiplied by the ratebase approved by DPUC. The percentages in parentheses show the portion of the company's proposed revenue increase that the dollar amount represents. The dollar amounts are understated somewhat due to a comparison mix of post- and pre-tax dollars.

Figure III-1 displays, for each case, the company request, the OCC proposal, and the DPUC final decision. As the figure shows, the DPUC final decision in most of the cases is closer to the OCC proposal than the company's. Figure III-2 shows the difference, in each case, between the company's requested ROE and the DPUC final decision, and between OCC's proposed ROE and DPUC's final decision. (The straight line represents DPUC decisions, with the variances presented in percentages higher or lower than the DPUC decision).

In 10 of the cases, the DPUC decision was closer to the OCC proposal than to the Company request; in two cases, there were no differences between the three positions at all due to approved settlements; in two cases, the differences were identical on either side of the DPUC decision; and in one case, the DPUC decision was closer to the company request than to the OCC proposal.

Figure III-1. Comparison of Return on Equity Positions in 15 Rate Cases

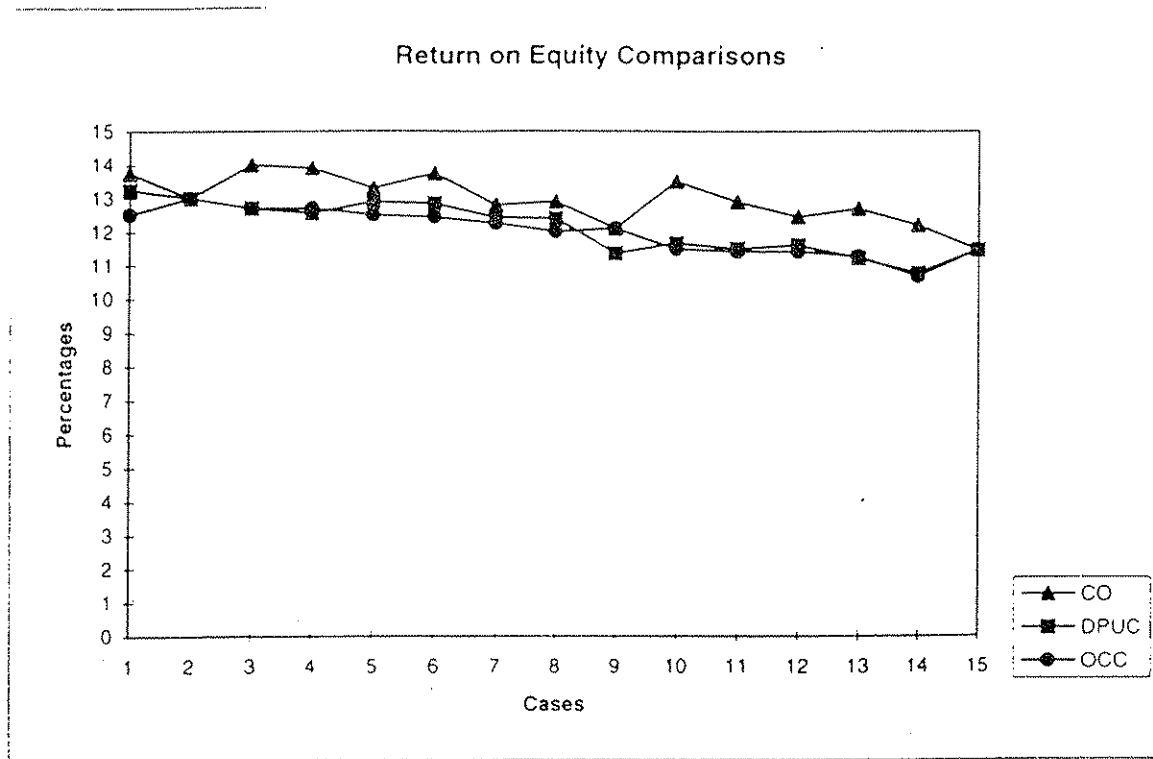
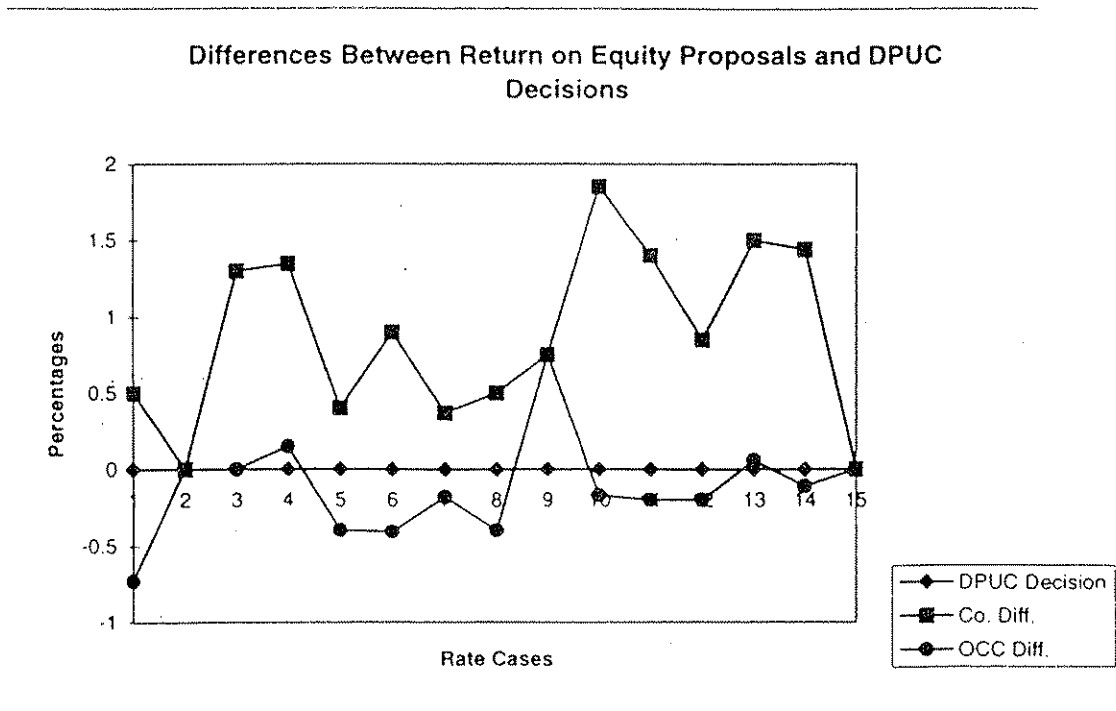


Figure III-2. Differences Between Return on Equity Proposals and DPUC Decisions in 15 Rate Cases



**Operating Expenses.** Operating expenses is an area within which OCC is very active. Utility expenses include three main types: 1) operation and maintenance expenses; 2) depreciation expenses; and 3) tax expenses. Theoretically, rates are to cover the costs of providing the service to the ratepayers--expenses that actually benefit other parties, like shareholders, are not to be covered through rates. The idea is that rates should be predicated upon reasonable and normal costs of operations and only those operating expenses that can be expected to prevail in the immediate future when the proposed rates will be in effect. Examples of expenses are directors and officers insurance, and pension and rate case costs.

Unlike the issue of the appropriate return on equity, OCC is not always but frequently mentioned in the DPUC analysis of an expense. Sometimes DPUC notes it agrees with OCC, while at other times it disagrees. In some instances where the actual OCC position is not cited or discussed, factual information is cited, attributed to "Response to OCC Interrogatory". This suggests that even if OCC's position is not persuasive, OCC participation contributed to the development of the record.

Figure III-3 contains examples from decisions where DPUC appears to have acted directly as a result of OCC activities.

<b>Figure III-3. Excerpts from Selected DPUC Decisions Where OCC Position Adopted</b>
---

*Stamford Water Co.*

*- From 1991 rate decision; the Stamford Water Company is a subsidiary of Bridgeport Hydraulic*

*- The company proposed that ratepayers pay for interest payments on deferred directors' fees (deferred so directors may postpone taxes). OCC maintained ratepayers should not bear this cost and recommended \$69,200 be disallowed. DPUC agreed and disallowed \$69,200.*

*- The company proposed a \$51,000 expense to pay for a consultant to provide guidance on community relations. OCC maintained that was an unnecessary expense; DPUC agreed and reduced revenues by \$51,000.*

*- The company proposed to expend \$15,800 to pay for a consulting service offering daily information on trading volume, prices and general trading information; OCC maintained this expense benefits shareholders, not ratepayers, and so expense should not be allowed; DPUC agreed.*

*- The company proposed that the president of Stamford Water Company be paid \$50,000 a year for seven years (in exchange for non-compete clause and consulting services). OCC maintained the terms of the agreement were too*

*ambiguous and time records weren't being kept. DPUC disallowed \$25,000 for each year, so shareholders could share expense.*

---

#### **Yankee Gas Co.**

*- From 1992 rate decision; Yankee Gas was divested from CL&P in the 1980s*

*- The company offered a stock sale program as a way to reduce the number of shareholders when it was divested from CLP, and sought to include an amount of \$191,514 in expenses. OCC maintained that the expenses should be directly allocated directly to shareholders consistent with the previous accounting of expenses from the divestiture proceeding. DPUC agreed and disallowed this \$191,514.*

*- The company proposed to include in expenses \$1,170,000 to amortize a projected \$3.5 million shortfall in the company's energy assistance program payments. OCC maintained this was inappropriate; DPUC agreed,, and disallowed \$1,170,000 in expenses (DPUC allowed company to defer shortfall issue for next rate case.)*

---

#### **Connecticut Light and Power**

*-From a 1991 rate decision*

*- The company based its office equipment depreciation calculations on a three year depreciable life. The OCC (and the AG) maintained that a three-year life was overly pessimistic and said a five-year life was more realistic. DPUC agreed, and reduced the expense by \$2,069,000.*

*- The company proposed that Directors and Officers Liability insurance be included as a covered expense. OCC (with the AG) maintained it was not an appropriate expense for ratemaking purposes, because most lawsuits are initiated by shareholders. Prosecutorial said cost should be split 50-50. DPUC agreed with OCC/AG and Prosecutorial, saying the cost should be split, and disallowed \$689,000. (DPUC acknowledges this is a change from its earlier position on the treatment of this insurance from the last CLP case).*

*- The company proposed a certain level of expense for leased vehicles. The OCC/AG maintained that, as a result cost containment efforts and reduced employee numbers, the leased vehicle expense should be reduced. DPUC agreed and reduced expense by \$341,000.*

---

### *United Illuminating*

*- From a 1992 rate decision*

*- The company proposed a \$13,300 expense for tax return and tax planning services for six officers. OCC maintained ratepayers shouldn't pay for this cost; DPUC agreed that the expenses are of personal nature and should not be included as expense.*

---

### *Connecticut Light and Power*

*- From a 1993 rate decision*

*- The company proposed full recovery of the costs of the Performance Enhancement Program, which consisted of recommendations developed in response to declining performance at Millstone. (The DPUC decision notes that "beginning in 1991, a variety of performance indicators suggested that aggressive management actions were necessary to restore nuclear performance at Millstone Station.") This amounts to \$24,994,000 for FY 93, \$22,629,000 for FY 94, and \$20,606,000 for FY 95. OCC "recommended that 50% of the costs of PEP be disallowed and the other 50% be placed in a deferred account until PEP is completed. At that time a determination on the allowable portion of these funds could be based on the degree of success of PEP. OCC bases this approach on its opinion that management is largely responsible for the decline in performance which PEP is designed to address".*

*"The AG believes that none of the cost of PEP should be allowed, because management neglect is responsible for the decline in performance. Shareholders should be responsible for 100% of the costs of PEP. This position is shared by several other intervenors in the case"*

*DPUC noted in its decision that there was "not enough time during this proceeding to conduct the in-depth analysis that a program of PEP['s] breadth warrants and that rate payers, who are being asked to support it deserve." DPUC determined that the company could recover 65% of its request, or \$16,246,000 in FY 93, \$14,709,000 in FY 94, and \$13,394,000 in FY 95. The remaining costs of PEP were deferred until another docket.(See 93-09-28) (This resulted in a savings to ratepayers of an average of \$8 million each of the three years covered by the rate case).*

---

## Impact Findings

There can be many explanations for the results on the return on equity issue. However, it is reasonable to conclude that DPUC finds the OCC position on ROE persuasive, and that OCC may take some credit for the ratepayer savings as a result of the difference between the company's proposal and the final decision. This difference can result in significant amounts of money. For example, in one CL&P rate case, the difference amounts to \$18.7 million dollars, while in the SNET case, the difference was \$18.4 million.

In terms of operating expense, these examples of course do not exhaust the results from the 15 decisions. However, they are indicative of the kinds of issues that arise in a rate case. Altogether, they represent \$28,514,814 not paid by ratepayers due to OCC involvement and DPUC acceptance of its positions.

Could DPUC have come to these conclusions "on its own", without OCC involvement? One has to consider the judicial nature of DPUC proceedings, dictated by the requirements of the state Uniform Administrative Procedures Act. DPUC as the decision maker, like a judge, must make its decisions based on the record before it. The record consists of data that all parties have had a chance to cross-examine and respond to during DPUC proceedings. DPUC in its role as a neutral decision maker cannot contribute to the record on the theory that a judge cannot judge his or her own evidence--there is a presumed conflict in mixing the two roles. And DPUC in its decision making role cannot utilize data that the parties have not had a chance to challenge. Thus some party needs to provide a record in addition to what the utility company submits upon which DPUC may base its decisions.

### OCC IMPACT: COURT APPEALS

Another area in which OCC's impact may be measured is based on its authority to appeal DPUC decisions. Since 1911, the public utility regulation statutes have provided for appeals of DPUC decisions. Section 16-35 states:

Any company, town, city, borough corporation or person aggrieved by an order, authorization or decision of the department of public utility control,...in any matter to which he or it was or ought to have been made a party, may appeal therefrom in accordance with [the UAPA].

Under the UAPA, "a person who has exhausted all administrative remedies available within the agency and *who is aggrieved* by a final decision may appeal to the superior court." The courts have developed a two-pronged standard for determining what being aggrieved means, which includes the demonstration of both a legal and factual basis.

The OCC has separate, specific authority to appeal DPUC decisions under C.G.S. Sec. 16-2a(a), which provides, in pertinent part:

[the] Office of Consumer Counsel may appeal from a decision, order or authorization in any such state regulatory proceeding notwithstanding its failure to appear or participate in said proceeding.

There has been some discussion about whether 16-2a(a) on its own provides OCC with the authority to appeal, or whether in addition OCC must be aggrieved as interpreted under the UAPA. In a 1994 trial court decision on whether OCC had standing to appeal a DPUC decision, the court found that OCC met the standards of aggrievement in the context of a CL&P rate decision, and noted that because of this, the question of whether the OCC statute was enough on its own did not have to be answered. (Under the aggrievement standard, a single ratepayer could not appeal a DPUC decision. In 1996, legislation passed to specifically authorize municipalities, which are each single ratepayers, standing to appeal under UAPA)

Since DPUC is an administrative agency, appeals of its decisions to court fall under the strictures of the Uniform Administrative Procedure Act. An appeal of an administrative decision is circumscribed by the rule that it is not considered a new review of the entire proceeding. Under UAPA, the court may not substitute its judgement for the agency's as to the weight of evidence on questions of fact. The court must affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions, are:

- in violation of constitutional or statutory provisions;
- in excess of the statutory authority of the agency;
- made upon unlawful procedure;
- affected by other error of law;
- clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

If the court finds any "prejudice", it may, if appropriate, render a judgement that modifies the agency decision, orders the particular agency action, or orders the agency to take action to effect the particular action. The court may also remand, or return, the case to DPUC for further proceedings.

Thus, OCC cannot bring an appeal simply because it disagrees with DPUC. Administrative agency actions carry a presumption of legality, and OCC has to prove, for example, the DPUC was "clearly erroneous" or acted arbitrarily and capriciously.

Since 1989, OCC has appealed DPUC decisions or rulings 13 times. The nature and outcomes of these actions are summarized here. (There are other cases in which OCC joins with DPUC in defending against an appeal, or which OCC monitors, but is not officially involved).

**Connecticut Light & Power cases.** Five of the 13 appeals involved CL&P, and were ultimately settled in the CL&P settlement approved by the DPUC in July 1996.

Two appeals involved decisions in two nuclear prudency investigations of two different outages at Millstone. In the first case, during the administrative process, the DPUC denied the OCC request for access to internal, self-critical NU evaluation reports. OCC appealed this procedural decision, as well as the ultimate DPUC decision determining that

CL&P acted prudently. The trial court agreed with OCC that it should have access to the internal NU reports, but made no determination on the prudence finding. Instead, the court sent the case back to DPUC to allow OCC the opportunity to present a case based on access to the internal reports. Because that theoretically could have changed the DPUC's ultimate decision on whether CL&P had acted prudently, the court didn't need to rule on that part of the appeal. The second case, which was identical, was appealed before the court's decision in the first. The court in that case cited its ruling in the first. These cases were pending DPUC action when they became part of the settlement.

A third case was an appeal of the DPUC 1993 CL&P rate decision in which the DPUC approved a three year rate plan, in which rates increased every year. OCC appealed that decision on the grounds that DPUC did not have the authority to approve multi-year plans. CL&P challenged OCC's standing (as well as the City of Hartford's) standing to bring the appeal. The trial court ruled OCC did have standing; the issue was pending court action when it became part of the settlement.

A fourth case was a reopener of the 1993 CL&P rate case. The DPUC proceeding dealt with the issues of different rates for supermarkets. OCC appealed on the procedural ground that DPUC acted too quickly in the case, in violation of UAPA rule that parties have the right to present evidence and cross-examine. The appeal was pending court action when it became part of the settlement.

The fifth appeal involved DPUC approval of a special rate contract between CL&P and Kimberly-Clark. Special rate contracts are designed to reduce costs to businesses, and were encouraged in 1991 legislation to enhance the state's business environment. OCC appealed the DPUC approval of this particular contract because they didn't believe Kimberly-Clark was experiencing the kind of economic burdens that the special rate contract was intended for. CL&P was allowed to pass along the cost of the special contract to its other ratepayers. According to OCC, CL&P argued that assisting business is inherently good for ratepayers and so it is appropriate for ratepayers to pay for the discounts. OCC believes the shareholders should bear the burden. This appeal actually was never filed, however, because, the process server hired by OCC did not act promptly. (Since then, the use of special rate contracts has diminished).

OCC also joined with DPUC in appealing a trial court decision on another case involving CL&P and the adjustment clause for changes in the sources for electricity generation. This is a mechanism similar in concept to fuel adjustment clauses. This case was also settled in the recent CL&P settlement.

**Connecticut Natural Gas Cases.** Three appeals involved Connecticut Natural Gas Company rate proceedings. Two were procedural in nature. In the first, during the most recent CNG rate case adjudicated in 1995, OCC objected to the case schedule established by DPUC, arguing that time was so limited as to impinge on their rights as a party (to present

evidence and cross-examine). DPUC would not alter the schedule, so OCC sought an injunction in court to address the problem. The court scheduled a hearing at which DPUC was to appear and "show cause" why an injunction shouldn't be imposed on them. Prior to the hearing date, OCC withdrew its motion after DPUC adjusted its schedule.

In the second, resolved in 1991, OCC appealed a decision of DPUC denying it the ability to add additional evidence to the record. In that case, the court disagreed with OCC and the appeal was thrown out.

The third appeal was denied as untimely by the court. In that case, while the DPUC proceeding was ongoing, OCC objected to part of the rate application filing. Because the proceeding was still before DPUC, the court determined there was no evidence that OCC would actually be harmed without its ruling.

**Connecticut Water Company case.** OCC appealed a Connecticut Water Company rate case decision on the basis that the rate increase allowed by DPUC was excessive. The water company also appealed the DPUC decision based on its view that DPUC acted arbitrarily and erroneously in denying its 25.25% rate increase, and by approving a confiscatory increase. The court upheld the DPUC decision.

The court's discussion in the case illustrates the issues involved in a substantive appeal. The court noted:

In an appeal from a decision of the DPUC, the court's task is limited to determine whether there was a logical and rational basis in the evidence for the DPUC's decision or whether the DPUC acted illegally or in abuse of its discretion. The court may not substitute its own judgement or discretion for that of the DPUC.

The court also noted:

... the court agrees with the DPUC that the wholesale attack strategy employed by all of the appellants, in which they let loose a 'torrent' of claimed errors, has the effect of undermining the appeals in two ways. It dilutes the strongest arguments and it creates the impression that the appellants seek a re-trial of the agency factfinding proceedings in this court.

**Cable Company (Norwich Century) case.** The DPUC granted Century Norwich a five year franchise renewal. OCC argued that Century Norwich's service had been so poor that the company should not be given a renewal, and so they appealed the DPUC decision on those grounds. The company moved the appeal to federal court. Ultimately, OCC withdrew the appeal because the company would be up for another franchise renewal before any court case could be resolved.

**SNET Rate Case and Telecommunications Policy Review Dockets.** These appeals were settled and withdrawn respectively by OCC.

### **Impact Findings**

There is no clear way to assess whether OCC uses its appeals authority optimally. It has achieved important results in some of the appeals, using its appeals authority in most cases to maintain procedural rights. For example, access to information is key to the ability of a consumer advocate to protect consumer interests; thus a challenge to DPUC's ruling on access to nuclear performance documents was important.

Appealing an administrative decision is not a simple matter, requiring resources and, in theory, a determination that the burden of proof established by the UAPA can be met. The ultimate decision to appeal, of course, rests with the Consumer Counsel. In part, how that power is viewed strategically by different persons can lead to different results. More than one OCC staff person noted there were decisions they believed should have been appealed but were not.

Based on the results of the committee analysis in both this chapter and the previous one, the committee finds that OCC has had a beneficial impact and should continue. However, it is of great concern to the committee that OCC on its own does not compile and report on results such as those discussed above. Its charge is to represent ratepayers, yet there is no evidence that OCC does anything to enable its constituency know about its activities. The program measures in the governor's budget are not very useful. This lack of reporting may very well be attributed to a resource problem, but there must be some way for OCC to be accountable.

The committee believes the lack of reporting belies a more basic problem, a lack of formal development of what the goals of the office are and how their achievement is measured. Therefore, the program review committee recommends:

**The Office of Consumer Counsel shall continue to exist as an independent entity attached to DPUC for administrative purposes only. OCC shall develop and implement a three-year strategic plan with operational goals and implementation action steps. The plan shall cover fiscal years 1997, 1998, and 1999. The plan must include, but not be limited to: specific measures to reflect its priorities in its resource allocation; analyses of how deregulation will impact consumers; and methods OCC will use to address any impact.**

**Beginning October 1, 1997, OCC shall annually submit a report to the legislative committee of cognizance on its achievements during the immediately preceding fiscal year, including but not limited to: how**

**many and what types of cases it actively participated in as a party, and why (e.g. filed prefile testimony, prepared interrogatories, briefs); how many and what types of cases it did not actively participate in and why; and the effectiveness of its participation.**

**On or about October 1, 1997 and annually thereafter, each utility shall include in its billing notice to its customers a description of OCC, and a notice to customers of the availability of the OCC annual ratepayer report upon request to OCC.**

One reason perhaps OCC has not been able to devote time to planning and evaluation is due to a concern expressed by OCC. This is the burden of administrative matters (e.g., personnel and purchasing) given its small staff. At the program review public hearing, DPUC offered to assist OCC in performing some of these administrative matters. The committee understands there have been preliminary discussions about this assistance between DPUC and OCC.

**The program review committee recommends that, by April 1, 1997, DPUC and OCC shall develop and implement a process by which DPUC assists OCC in handling administrative matters.**

### FINE TUNING

#### Divergent Consumer Interests?

The Office of Consumer Counsel is charged to “act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies”. Of the 33 other state entities that handle consumer advocacy matters, 19 are charged with specifically focusing on residential and small businesses. The remaining fourteen have broad mandates like Connecticut.

What the impact measures discussed in Chapters Three and Four show is that OCC influences the process by lowering total revenues allowed to the utility, which benefits all consumers. Concerns about OCC conflicts among consumers seem to arise in the context of rate design issues, or the implementation of certain policies, such as economic development flexible rates. Rate design and allocation is guided by the principle that each type of consumer class (e.g., residential, large industrial) should pay in rates what it costs to provide service to each type. These costs, the determination of which calls for judgement, can differ, creating interclass conflict.

At the program review’s public hearing on this study, the Connecticut Business and Industry Association (CBIA) voiced this concern about OCC:

[The] Office of the Consumer Counsel often [does] not balance [its] representation of various consumer groups. We perceive an internal cultural bias against both large and small business consumers. In general, these agencies tend to advocate for low income residential ratepayers, sometimes to the detriment of the business ratepayers. Small business consumers, in particular are not being well represented by these consumer advocates.

An example of the Office of Consumer Counsel’s narrow focus is their opposition to electric economic development rates. This position is harmful to other ratepayers. These special lower electric rates are offered to businesses who are in danger of leaving the electric grid because of severe financial difficulties or opportunities to purchase power elsewhere.

These special rates save jobs within the state. More importantly, these rates save other residential and commercial ratepayers money. If the consumer receiving the economic development rate did not receive that rate, it would leave the electric utility system, increasing costs to the fewer remaining customers. In spite of this benefit to other consumers the Office of Consumer Counsel continues to oppose these economic development rates.

In a letter to the program review cochairpersons submitted after the hearing, the Office of Consumer Counsel maintained it did support flexible economic development rates as long as the ratepayers did not pay for their costs. ( Note the attempted appeal of a DPUC decision approving such a rate for the Kimberly-Clark Company cited earlier in this report). OCC further responded:

...OCC has not discriminated in seeking the benefits of lower rates and has sought an apportionment of benefits and burdens based on sound cost of service and policy objectives....

OCC sought sound conservation and load management (C&LM) investments in industrial and commercial enterprises in the mid-1980's, before this was fashionable. Indeed, OCC vigorously advocated investing some three-fourths of C&LM investments in industrial and commercial customers' premises, the effect of which would be to reduce customer bills and make those customers efficient and vibrant competitors in their industries. By way of example, in the years 1993 through 1996, C&LM investments made by CL&P in industrial and commercial customers' premises amounted to some \$110 million, approximately 76 per cent of the total expenditures in that period.

As noted in the briefing, the large industrial consumers often hire representatives to speak on their behalf before DPUC. As deregulation continues in the telecommunications areas, and possibly begins in the electric area, large users will be attractive to competitive utility providers and will also be in a position to bargain with the providers. Residential and small business consumers may not be in the same position.

**The program review committee recommends that Connecticut General Statutes Section 16-2a be amended as follows:**

**There shall continue to be an independent Office of Consumer Counsel, within the department of public utility control for administrative purposes only, to act as the advocate for consumer interests in all matters which may affect Connecticut RESIDENTIAL AND SMALL BUSINESS consumers with respect to public service companies...**

The committee does not think this will alter significantly how OCC currently approaches its work. However, the articulated focus will eliminate distracting arguments about whether OCC is fulfilling its mandate. The purpose of OCC is to represent those who cannot represent themselves. This clarification will enable OCC to more clearly target its strategic plan and goal setting, recommended earlier in the report.

## **Location**

The independent Office of Consumer Counsel was established in 1975. When its predecessor office was created just a year earlier in 1974 within the Public Utilities Commission (PUC), the proponent of the amendment acknowledged he had been asked where the office should reside:

Wouldn't this office be better placed in the department of consumer protection? Couldn't it be better placed in the office of the attorney general? And maybe that's so, but the fact of the matter is we have a specific amendment before us placing it in the PUC. I don't think it will detract at all from the work of the consumer counsel to be placed physically within the PUC because I think their mandate is clear enough. So let us not quibble. If you like the idea, let us not quibble over whether it can be better placed here or there. I think this is a move in the right direction. If we find in subsequent years that the office could be better placed within a different structural context, why we might be able to make a change. But at least this is a beginning.

The program review briefing contained summary information about other states with a formalized consumer advocate function, and where it is located. There is just about an even split between the consumer advocacy offices that are independent and those that are part of an attorney general's office.

In theory, the benefits of such a move in Connecticut would be:

- increased administrative support so that OCC professionals could focus on consumer advocacy;
- more direct political accountability;
- a more visible presence for the function;
- a deliberative, "lawyer-like" approach to consumer advocacy; and
- access to OAG anti-trust expertise, beneficial as competition replaces regulation.

The detriments to such a move would be:

- office staff could be used for non-consumer advocacy matters;
- office could be used for political purposes, as the governor and attorney general are individually elected in this state and could be, as they are now, members of different political parties; and
- technical proficiencies of OCC work could be diluted if importance not recognized.

There is no reason why the benefits described above could not occur without moving OCC to the Office of the Attorney General (with the exception of the direct political accountability concept. Now, the governor appoints both the consumer counsel and the DPUC commissioners, which establishes a political accountability balance.) Recommendations in other parts of the report go to achieving these benefits. **The program review committee does not recommend that OCC be merged into the Office of Attorney General.**

### **Need For Streamlining?**

Periodically throughout the study, concerns have been raised about whether duplication of effort or overlap of authority exist in the arena of consumer advocacy. To assess this concern, committee staff defines duplication to mean situations where more than one entity performs the same function. Overlap in authority, in contrast, means the potential exists for duplication, but in reality duplication may or may not occur. How these concepts fit in the context of consumer advocacy before DPUC is examined below.

**Overlap in subject matter authority.** There are currently three entities with statutory or common law authority that encompass the representation of consumer interests in public utility matters: OCC; DPUC party-designated staff, and the attorney general office. Table V-1 summarizes the formal authorities and responsibilities of the three entities as parties.

**Table V-1. Summary of Formal Authority of OCC, DPUC, and OAG as Parties in Regulatory Matters**

Entity	Office of Consumer Counsel	DPUC Staff as Party to Proceedings	Office of Attorney General
Charge	Act as advocate for consumer interests in all matters which may affect Connecticut consumers and is authorized to appear in and participate in any federal or state regulatory or judicial proceedings	In large rate cases, file proposed modifications of the utility's rate amendment proposal to carry out statutory principles designed to guide DPUC decisions. Principles include: promotion of economic development; energy and water conservation; rate sufficiency; prudent utility management	Represent the people of the State of Connecticut
Source of Authority	Statutes	Statutes	Common law
Discretionary?	No	No	Yes
Staff	12 Filled (17 Authorized)	1.75 (avg. per case)	1.5

As set up formally, there is clearly subject matter overlap among the three entities.<sup>8</sup> As rate sufficiency and prudence of management are among the guiding principles for DPUC, DPUC designated party staff could address some of the same issues as OCC does as a consumer advocate. Differences between the two include the fact that DPUC designated party staff only appears in certain large rate cases, just a portion of the full range of DPUC activity. Further, in the 12 cases from 1990-1995 where prosecutorial staff were used, an average of only 1.75 persons were assigned to each case. Only in one case since 1990 was a consultant hired to assist DPUC party-designated staff. These DPUC staff also work full-time advising the commission.

The attorney general's common law charge to represent the people of Connecticut is broad enough to encompass both consumer interests and other public interests in the DPUC guidelines. Citizens are consumers, but they also have interests in economic development and a clean environment. A significant structural difference between OCC and the Office of Attorney General is that OAG participation in consumer representation is at the discretion of whoever is currently the state's attorney general. Currently, one and a half assistant attorneys general are dedicated to the consumer advocacy role, and the office selects cases in which to participate.

Thus, though there is subject matter overlap, the differences between OCC and the other two entities in scope of responsibility and available resources create a presumption against duplication. This presumption is strengthened by the belief that the more complete the record is in terms of different ideas and information presented, DPUC's decision making process is enhanced.

**Duplication.** Precisely how duplication in consumer advocacy efforts could occur within the utility regulatory process is explored in this section. First, in a rate case, prior to any hearings, parties and intervenors may submit interrogatories to the particular company for clarification or further information. It is quite possible that parties might ask similar questions, as the interrogatory process occurs simultaneously. However, DPUC has addressed this problem in its directions to the companies about responding to the interrogatories. Specifically, DPUC directs companies to cite any previous answer in responding to a duplicate question. (All parties get copies of all the interrogatories and responses).

Cross-examination of company witnesses is another facet of participation. Concern has been expressed about questions being repeated because a party wasn't in attendance during a different part of the proceeding. This concern is difficult to quantify and it could be as much a resource problem as a duplication issue. Given the enormity of resources spent on the regulatory process when accounting for all the parties, though, the program review committee believes this circumstance, while perhaps irritating to some, is not that significant a problem. To the extent it is a resource problem, filling the vacant OCC positions should mitigate the situation by allowing OCC staff to focus on fewer cases.

The issue of duplication between OCC and the DPUC staff-designated-as-party function was discussed back in 1984, when the function was established in statute. Some of the comments expressed then might be instructive. First, then-DPUC Chairman John Downey testified before the energy committee<sup>9</sup>:

The commissioners support the concept of a strong alternative case being put on. As far as we're concerned whether it be by DPUC staff members or consumer counsel or through some division of labor it can only I think strengthen our ability to reach a fair and equitable decision.

When probed further about the commissioners' level of support for the proposal, he said:

There was no strong opposition to the notion of the case being put on. We all voiced the question as recently as this morning, why not as an alternative beef up the consumer counsel's [office]. But one way or another we have no problem with a strong alternative case being put on....It is not clear in my mind where the division of labor might be between the consumer counsel and the staff putting on a case. There could be overlap or at worst a duplication...I think the main consensus is to have a strong alternative case, be it through one vehicle or another. And I think the concern that this is a costly and difficult enterprise is also a consensus that we would hope all interested would recognize that.

An energy committee member queried:

The staff will put on the case. Where does the staff come down? Do they come down on the side of the company, on the side of the consumer, or if it comes down on the side of the consumer, what happens to the consumer [counsel] office? Is there a need for them? Is there a need for them if that's the case? And then, if the Commission itself has questions of a technical nature, where do they go?

Commissioner Downey replied:

Well I think a lot of these things are up in the air at this moment...I have not yet arrived at an answer to your concern but I think its a legitimate concern, and it needs a lot of looking into to come up with something that works well and best for us.

Then-Consumer Counsel Barry Zitser also testified on the bill. He acknowledged people had suggested he should oppose the bill because of its possibility as a replacement for OCC. He said "In another year, another sponsor, maybe I'd have those concerns, but I do not." His main concern was the lack of DPUC resources to perform that function. He also noted that if the purpose of the bill was to put on a consumer case, his staff should be increased as OCC was already established to represent consumers. He thought the problem of keeping advisory and designated-as-party staff separate was a significant one.

Finally, Attorney David Silverstone, who served as the state's first Consumer Counsel, testified:

There are numerous situations in which the existing process does not provide sufficient information to take action which will advance state policies such as energy conservation or efficient management by utility companies. .... It should be noted however, that an effective Division of Consumer Counsel will remain a vital component of the system. Advocacy on behalf of the great majority of consumers who would otherwise be underrepresented must be provided for and the consumer counsel's office has proven to be a very effective mechanism. A separate staff advocacy unit could no supplant this function since the staff would also be obligated to advocate positions which advance other state policies. Furthermore, only the Consumer Counsel is in a position to initiate court proceedings where necessary to protect consumer interests.

Attorney Silverstone's view of coexistence was echoed in 1995 during consideration of legislation to establish a full-time DPUC prosecutorial staff. In response to inquiries about whether there was duplication of effort, the DPUC executive director noted:

There are more stakeholders in the process than just customers and I think that OCC and AG does look more toward the customers, the consumer's point of view. And I think that the DPUC staff and I would think it would be the philosophy of the prosecutorial staff as well, to bring into balance some of the other stakeholders. So again, I think its more of a balance [what prosecutorial staff does], it is not just looking at one side.

The committee believes that to the extent the overlap creates the possibility for duplication, for the most part the problem has been handled by informal coordination. (Whether the prosecutorial function is effective or not in its present configuration in supporting state policies on conservation or economic development was not within the scope of this study). However, consideration for ratepayer costs is always important, whether these costs support utility company or governmental activities. Coordination should be formalized.

**The program review committee recommends that by February 1, 1997, memoranda of understanding be entered into between OCC and OAG, and OCC and DPUC, each committing the signatory offices to coordinate activities related to promoting consumer interests, to avoid duplication of effort.**

This recommendation is not intended to diminish OCC's position as the primary consumer advocate, based on its statutory authority and resources.

### OCC RESOURCES

The budgets for OCC and DPUC are appropriated by the general assembly, but funded from assessments of the various regulated utility companies. In FY 95-96, OCC expended \$655,463 in appropriated funds, ten percent of the \$6,434,291 spent by DPUC in the same year. As noted in the briefing, the budget does not give the total picture of the resources expended for OCC to carry out its job. State statute allows OCC (and DPUC) to hire consultants up to \$200,000 per case. The utility company involved in a particular case directly pays the consultant costs.

Sometimes, OCC seeks bids from consultants for certain work. In most cases, the office contracts with the same consultants used previously. The consultants used by OCC sign a contract with OCC, which provides that payment will be made by a specific utility.

Although OCC maintains files on its consultant contracts, it does not compile summary information on consultant expenditures. Based on the committee review of the files, in the last three fiscal years, a total of \$2,261,449 has been spent on consultants, averaging \$753,816 a year. On average for the last three years, the amount spent off-budget by OCC for consultants was 64% of its budgeted expenditures. Of course, the actual yearly amounts vary. Table VI-1 on the following page contains actual expenditures for the last three fiscal years. Figure VI-1 depicts the comparison of OCC budgeted expenditures to its off-budget consultant expenditures.

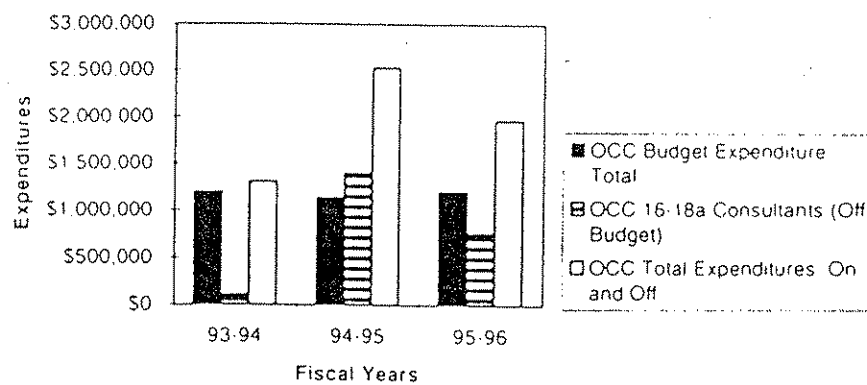
By way of comparison, DPUC has the same authority to hire consultants as does OCC. In addition, in order to meet its management audit requirements, it is also authorized to hire or cause to be hired management audit consultants, whose costs are paid directly by the affected utility. In total, for three years, DPUC total budget expenditures equaled \$31,115,474, or a yearly average of \$10.3 million. For consultants over these three years, DPUC caused to be spent \$4,023,136, or \$1.3 million a year. On average for the last three years, DPUC spent the equivalent of 13% of its budget on consultants. Management audit consultants accounted for over half of that total consultant expenditure.

Table VI-2 on the following page contains actual expenditures for the last three fiscal years. Figure VI-2 depicts the comparison of DPUC budgeted expenditures to its off-budget expenditures for consultants.

**Table VI-1. OCC Expenditures: On and Off Budget for FYs 94-96**

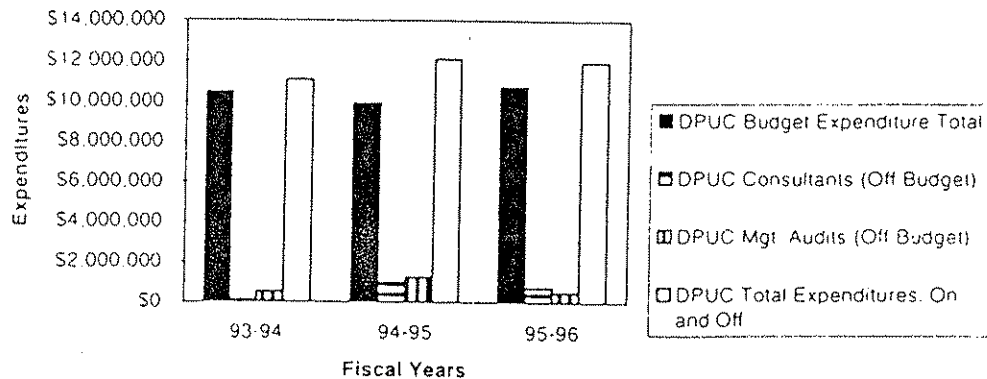
	FY 93-94	FY94-95	FY 95-96
OCC Total Budget	\$1,196,557	\$1,133,437	\$1,204,186
OCC Consultants (Off Budget)	\$107,100	\$1,394,500	\$759,849
OCC Total Expenditures	\$1,303,657	\$2,527,937	\$1,964,035

**Figure VI-1. OCC Expenditures: On and Off Budget for FYs 94-96**



**Table VI-2. DPUC Expenditures: On and Off Budget for Fys 94-96**

	FY 93-94	FY94-95	FY 95-96
DPUC Total Budget	\$10,473,114	\$9,895,730	\$10,737,816
DPUC Consultants (Off Budget)	\$95,106	\$973,152	\$733,242
DPUC Management Audits (Off-Budget)	\$502,558	\$1,231,026	\$488,052
DPUC Total Expenditures	\$11,070,778	\$12,099,908	\$11,959,110

**Figure VI-2. DPUC Expenditures: On and Off Budget for Fys 94-96**

In terms of dollars spent for non-management audit consultants, Table VI-3 below shows the actual dollar amounts for OCC and DPUC and how that dollar amount compares to the agency expenditures. (Appendix A contains detailed expenditure information for both OCC and DPUC).

**Table VI-3. Consultant Expenditures and Percentage of Budget Expenditures**

	93-94	94-95	95-96
DPUC	\$95,106 (0.09%)	\$973,152 (9.8%)	\$733,242 (6.8%)
OCC	\$107,100 (9%)	\$1,394,500 (123%)	\$759,849 (63%)

The statute authorizing the use of consultants establishes the circumstances under which consultants may be used--essentially to either provide expertise that does not exist among current OCC staff, or supplement skills that already exist, but are committed to other work. Thus there are dual conditions being addressed by the use of consultants. In practice, OCC hires an accounting firm when it wants an in-depth independent financial audit done. It has hired engineers and experts in nuclear prudency issues. Infrequently, it has used a consultant to provide cost of money expertise and testimony, when its in-house staff expert is involved in other matters.

In only one instance has it hired a lawyer as a consultant, but that exception accounts for a significant portion of the consultant expenses in the last few years. A lawyer with telecommunications expertise has been under contract with OCC since 1994 to the present, working on a myriad of telecommunications deregulation issues related to the 1994 public act establishing competition in telecommunications as the public policy of the state.

What appears to be a significant use of consultants could be interpreted in different ways. One interpretation could be that OCC is understaffed, and it is easier to hire a consultant than hire a state employee. Another interpretation is that a decision was made that it was more cost-effective to hire experts on an as-needed basis as opposed to maintaining a full-time staff person who would not be needed on a full-time basis (for example, an engineer or a group of accountants). The office's long term staffing vacancies, discussed below, muddy the waters in assessing consultant use.

The committee's main concern about OCC's use of consultants is that the total costs are never reported anywhere. These costs are ultimately paid for by the ratepayers, pursuant to statutory authority granted to OCC (and DPUC); but because they are outside the budget process, the full costs of regulation. Staff understands the different bases for both--the budget is from a general assessment of several utilities, while consultant costs come from specific utilities involved in a specific case, but both costs make up the true expenses of OCC. As ratepayers also ultimately support DPUC expenditures, its off-budget expenses should be reported also.

**The program review committee recommends that OCC and DPUC shall report on consultant expenditures made in the preceding fiscal year to the**

**appropriations committee as part of the appropriations process, as well as the committee of cognizance over public utility matters.**

### **Staffing**

Currently, OCC has 17 authorized staff positions, of which 12 are filled. (The office also has one durational manager). Three unfilled positions are for lawyers, one is for a finance specialist, and the other is for an accounts examiner. Four of these vacancies--two lawyers and the finance and accounts positions, were authorized in 1994, but have never been filled.

The authorization of those positions was in response to a reorganization plan for the Office of Consumer Counsel submitted in February 1992 by then-Consumer Counsel John Merchant to the Energy and Public Utilities Committee. (Mr. Merchant was appointed as Consumer Counsel by Governor Weicker, and began his term in May 1991; prior to his appointment, the Consumer Counsel position had been unfilled since March 1990)

Specifically, the plan proposed to increase staff from 10 to 26 persons. Mr. Merchant noted that "on its face, this may appear as an excessive request. In truth, however, the OCC should have had a staff of 18-20 in place for the last several years." He concluded: "The review leading to this proposal concluded that the OCC is not presently staffed to provide ratepayers with that full measure of representation which the statute implies they are entitled to receive."

Because of the implementation of the biennial budget process, the first opportunity the legislature could act on the report was in the 1993 session, when it formulated the FYs 94-95 budget. The authorized positions were increased from 10 to 17. Table VI-4 compares OCC staffing in three different scenarios -- what the situation was when the plan was proposed; what the plan proposed; and current staffing levels.

Despite these authorizations, OCC has yet to fill the positions, as Mr. Merchant reported in his 1995 and 1996 appearances before the legislature's appropriations subcommittee. There was some discussion at the subcommittee to cut some authorized positions in the 1996 session, but instead it was determined that OCC hiring activities would be closely monitored.

It is strange that after the effort of producing a report to the legislature mapping out a restructuring of an agency, and then actually winning approval of additional authorized positions that no actual hiring took place. According to OCC staff, some steps were taken to identify candidates, but apparently management follow-through was lacking--the job simply didn't get done. The new consumer counsel, who reports he is currently actively working on filling some of these positions soon, has an opportunity to resolve these staffing issues.

**Table VI-4. OCC Staff Authorizations and Vacancies: Proposed and Actual**

Positions	At Time of Plan-1992 Authorized (Vacant)	Proposed under Plan	Current Authorized (Vacant)
Consumer Counsel	1	1	1
Assistant to Consumer Counsel	1	1	1
Attorneys	3 (1)	8	3 (3)
Financial Analyst	1	6	3 (1)
Accountant	1	5	3 (1)
Support Staff	3	7	3
Total	10 (1)	26	14 (5)

A useful part of the 1992 plan was the presentation of what were called “realities”, which are similar to what the committee recommendation about strategic plan goal statements envisions. These “realities” were as follows:

- Conservation issues are increasingly more critical and must be given priority. This translates into staffing to deal with the issues on a full time basis.
- Inherent in proper and professional representation is a capacity to keep current with industry issues and their continuing impact on ratepayers. This specific knowledge is then factored into any judgements about what is to be advocated and why.
- The impact of utility issues on economic development, as seen through the eyes of ratepayers, must be continuously assessed, evaluated and advocated as part of any policy formulation or implementation before decisions are made.
- Federal and State changes in energy policies must be monitored and evaluated from a ratepayer perspective and responsible comment made when and where possible and practical.
- In-house expertise, with a broad perspective, but a Connecticut focus, is preferable to outside opinions about what is good for Connecticut.

## Endnotes

1. Public Act 96-42 allows DPUC in certain proceedings to approve performance-based incentives to encourage gas and electric companies to operate efficiently and provide high quality service at a fair and reasonable price. This type of regulation is different from the traditional cost-plus rate of return model.
2. The two regulatory entities--the Public Utility Control Authority, which consists of the commissioners, and the Department of Public Utility Control, which consists of the commissioners' staff--are described here separately, but will be referred to collectively as the department or DPUC, unless otherwise indicated.
3. Under the Uniform Administrative Procedures Act, a party is a person 1) whose legal rights, duties, or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, 2) who is required by law to be a party in an agency proceeding, or 3) who is granted status as a party after submitting a petition to the agency and the petition demonstrates the legal rights, duties or privileges will be specifically affected by the agency's decision in the contested case.

An intervenor means a person, other than a party, granted status as an intervenor by an agency if the presiding officer determines the person has submitted a written petition to the agency and copies to the other parties at least five days before the hearing, and the petition states facts demonstrating the petitioners participation is in the interest of justice and will not impair the orderly conduct of the proceedings.
4. Krieger, Stefan H., An Advocacy Model for Representation of Low-Income Intervenors in State Public Utility Proceedings, *Ariz. St. L.J. Vol. 22*, pp.639-701, 676 (1990).
5. Krieger, Stefan H., Problems for Captive Ratepayers in Nonunanimous Settlements of Public Utility Rate Cases, *Yale Journal of Regulation*, Vol. 12, pp. 257-343, 276-277 (1995)
6. Return on equity (ROE) refers to the return investors in common stock potentially could receive, and is a part of the overall "rate of return" calculation. Rate of return actually is the sum of the various allowed returns for the different types of capital (i.e, long term debt, preferred stock and common stock), after weighting them to reflect the proportion of each type of capital held by the company.
7. Kahn, Alfred E., *The Economics of Regulation: Principles and Institutions Volume I: Principles*, pp. 42-43, John Wiley & Sons, Inc. 1970.
8. The consumer counsel statute itself affirmatively states: "Nothing in this section shall be construed to prevent any party interested in such proceeding or action from appearing in person or from being represented by counsel therein."
9. Commissioner Downey had major concerns about the resources needed to fund this staff designated as party function:

I do wish, however, to express a general concern and then proceed with a couple of specific queries as to this particular bill. I have confidence as recognized here in this committee, but I would hope that all concerned and all interested in CT recognize that *this step of staff "putting on a case" is a major change and in some ways a radical shift for regulation in the state of Connecticut*, and I would stress that simply filling current vacancies, I believe would not in a way that I believe would do justice to the intent of this legislation.

*To recruit, train and put into action an adequate staff able to make a vigorous advocacy case, I would stress, will be costly in time and money...I need not stress that this would entail a great deal more than cross-examining witnesses or analyzing a company case. It requires a number of skills that we've not been called on to exercise on staff, and it is a major undertaking.. (emphasis added)*

Additionally, he was concerned about commissioners potentially being deprived of necessary staff support to make a decision, and about keeping party staff separate from advisory staff.

Also, two utility representatives also testified in favor of the concept. One said:

We want a strong, fully advised intelligent staff..where staff is so short handed that they lack both the ability and the competence to do the job..it comes down to a detriment to the utilities, because [staff ]says they can get along. We're not sure about this new innovative tactic or new innovative rate proceeding that being put on by the company so we'll give them half...The other beneficial point to be made is that if the staff does put on a case, then we have the opportunity to cross-examine and that is a big plus. So its on the record, no one's hiding behind the skirts of the commissioner and the whole world knows what it is the staff is trying to accomplish.

Another noted:

All too often, parties have contended that the real bases for decision making are presented to the commission not during the adversary hearing on the record, but after the record is closed when the various parties and intervenors are not able to cross examine or refute the testimony that has been present.